

U.S. Customs and Border Protection



19 CFR PART 177

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN KNIT STRETCH BRIEFS AS ARTICLES FOR THE HANDICAPPED

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of one ruling letter and of revocation of treatment relating to the tariff classification of certain knit stretch briefs.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning tariff classification of certain knit stretch briefs under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 33, on August 15, 2018. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0046.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obli-

gation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 33, on August 15, 2018, proposing to modify one ruling letter pertaining to the tariff classification of certain knit stretch briefs as articles for the handicapped. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice. One party notified CBP that it has been involved in substantially identical transactions. The party submitted a comment with regard to the proposed action. The comment is addressed in the final ruling letter, i.e., Headquarters Ruling Letter (HQ) H297341.

In New York (NY) Ruling Letter A89600, dated December 9, 1996, CBP classified certain knit stretch briefs in heading 9817, HTSUS, specifically in subheading 9817.00.96, HTSUS, which provides for, among other things, articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons, other than articles for the blind. CBP has reviewed NY A89600 and has determined the ruling letter to be in error. It is now CBP's position that the knit stretch briefs are not classifiable as articles for the handicapped.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY A89600 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained HQ H297341, set forth as an attach-

ment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 13, 2018

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H297341

November 13, 2018

OT:RR:CTF:VS H297341 CMR

CATEGORY: Classification

TARIFF NO.: 6108.22.9020; 6108.22.9030

PARKER, POE, ADAMS & BERNSTEIN
2500 CHARLOTTE PLAZA
CHARLOTTE, NORTH CAROLINA 28211

RE: Modification of New York Ruling Letter A89600, dated December 9, 1996; classification of medical stretch briefs; not articles for the handicapped

DEAR SIR/MADAM:

On December 9, 1996, the U.S. Customs Service (now, U.S. Customs and Border Protection) issued New York Ruling Letter (NY) A89600, dated December 9, 1996, to your firm in response to a ruling request submitted on behalf of your client, MB Products Ltd. The ruling letter addressed the classification of certain garments described as medical stretch briefs under subheading 6108.22.90, of the Harmonized Tariff Schedule of the United States (HTSUS). The ruling also addressed the eligibility of these garments for classification in subheading 9817.00.96, HTSUS.

This office has reviewed NY A89600 and determined that it erred with regard to the determination of eligibility for these garments under subheading 9817.00.96, HTSUS. Therefore, we are modifying NY A89600 with regard to that determination. The portion of the decision classifying the medical stretch briefs under subheading 6108.22.90, HTSUS, remains unchanged.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 33, on August 15, 2018, proposing to modify NY A89600, and any treatment accorded to substantially similar transactions. One comment, which will be addressed below, was received in response to this notice.

FACTS:

NY A89600 describes the garments at issue, consisting of five styles of briefs and described as medical stretch briefs, as “constructed of a knitted mesh composed of approximately 90% polyester and 10% lycra spandex with elasticized waist and leg openings.” The products style numbers are: self-contour/product no. 90, standard/product no. 32, classic/product no 31 and premium/products no. 63 and 67. The ruling indicates that the submission stated “the principal application of these products is to hold disposable and reusable absorbent pads for use by adults and children afflicted with permanent or chronic incontinence problems.” Further, it is indicated that the briefs are designed and promoted to be washed and reused.

NY A89600 classified the adult briefs in subheading 6108.22.9020, HTSUS, which provides for, among other things, women’s knitted or crocheted, briefs, panties, and similar articles. The children’s briefs were classified in subheading 6108.22.9030, HTSUS, which provides for, among other things, girls’ knitted or crocheted, briefs, panties, and similar articles. The 2018 duty rate for these provisions is 15.6% *ad valorem*. In addition, the ruling found that the subject briefs and panties were eligible for classification in subheading 9817.00.96, HTSUS, which provides for, among other things, articles spe-

cially designed or adapted for the use or benefit of physically or mentally handicapped persons, other than articles for the blind. Articles classified in subheading 9817.00.96, HTSUS, are not subject to duty.

ISSUE:

Whether the stretch briefs described above are eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as articles specially designed or adapted for the handicapped.

LAW AND ANALYSIS:

Congress passed the Educational, Scientific, and Cultural Materials Importation Act of 1982, Pub. L. No. 97-446, 96 Stat. 2329, 2346 (1983), and the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 102 Stat. 1107 (1988), to implement the Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific and Cultural Materials (“Nairobi Protocol”), an international agreement intended to provide “duty free treatment to articles for the use or benefit of the physically or mentally handicapped persons, in addition to articles for the blind.” *See also U.S. Customs Serv. Implementation of the Duty-Free Provisions of the Nairobi Protocol, Annex E, to the Florence Agreement*, T.D. 92-77, 26 *Cust. B. & Dec.* 240, 241 (1992) (“*Implementation of the Nairobi Protocol*”). Presidential Proclamation 5978 and Section 1121 of the Omnibus Trade and Competitiveness Act of 1988, provided for the implementation of the Nairobi Protocol into subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS.¹ Therefore, this legislation eliminated duties for products covered by subheading 9817.00.96, HTSUS, which provides for:

articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles . . . Other.

See subheading 9817.00.96, HTSUS; *see also Sigvaris, Inc. v. United States*, 227 F. Supp. 3d 1327, 1335 (2017). Subheading 9817.00.96 excludes “(i) articles for acute or transient disability; (ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled; (iii) therapeutic and diagnostic articles; or, (iv) medicine or drugs.” U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS.

As the language of this provision indicates, classification within subheading 9817.00.96, HTSUS, depends on whether the article in question is “specially designed or adapted for the use or benefit of the blind or physically and mentally handicapped persons,” and whether it falls within any of the enumerated exclusions. *See* subheading 9817.00.96, HTSUS; U.S. Note 4(b), Subchapter XVII, Chapter 98, HTSUS. Note 4(a) to Chapter 98, HTSUS, provides:

(a) For purposes of subheadings 9817.00.92, 9817.00.94 and 9817.00.96, the term “blind or other physically or mentally handicapped persons” includes any person suffering from a permanent or chronic physical or

¹ By Presidential Proclamation 6821 of September 12, 1995, 60 *Federal Register* 47663 (published on September 13, 1995), the superior text preceding subheading 9817.00.92, HTSUS, (and applicable to subheadings 9817.00.92, 9817.00.94, and 9817.00.96, HTSUS) was modified to include parts and accessories for the articles of the subheading.

mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.

U.S. Note 4(a), Subchapter XVII, Chapter 98, HTSUS. This list of exemplar activities indicates that the term "handicapped persons" is to be liberally construed so as to encompass a wide range of conditions, provided the condition substantially interferes with a person's ability to perform an essential daily task. *See Sigvaris*, 227 F. Supp. 3d at 1335. While the HTSUS and subchapter notes do not provide a proper definition of "substantial" limitation, the inclusion of the word "substantially" denotes that the limitation must be "considerable in amount" or "to a large degree." *Id.* at 1335 (citing *Webster's* at 2280).

In the Court of Appeals for the Federal Circuit's decision in *Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), the court found that the Court of International Trade reached the correct conclusion in finding the merchandise at issue therein, compression stockings, not eligible for classification under subheading 9817.00.96, HTSUS, but the court disagreed with the lower court's analysis. The court found that the Court of International Trade looked to the condition or disorder and whether it is a handicap. The court stated:

The plain language of the heading focuses the inquiry on the "persons" for whose use and benefit the articles are "specially designed," and not on any disorder that may incidentally afflict persons who use the subject merchandise.

* * *

... we must ask first, "for whose, if anyone's, use and benefit is the article specially designed," and then, "are those persons physically handicapped?"

Id.

The language of subheading 9817.00.96, HTSUS, states that the provision provides for "articles specially designed or adapted" for the use or benefit of the physically handicapped. The design and construction of an article may be indicative of whether it is specially designed or adapted for the use or benefit of the handicapped. The HTSUS does not establish a clear definition of what constitutes "specially designed or adapted for the use or benefit" of handicapped persons. In the absence of a clear definition, the Court of the International Trade stated that it may rely upon its own understanding of the terms or consult dictionaries and other reliable information. *See Danze, Inc. v. United States*, Slip Op. 18-69 (Ct. Int'l Trade 2018). Moreover, in analyzing this same provision in *Sigvaris v. United States*, the Court of International Trade construed these operative words as follows:

The term "specially" is synonymous with "particularly," which is defined as "to an extent greater than in other cases or towards others." [*Webster's*] at 1647, 2186

... The dictionary definition for "designed" is something that is "done, performed, or made with purpose and intent often despite an appearance of being accidental, spontaneous, or natural." [*Webster's*] at 612

See Sigvaris, 227 F. Supp. 3d at 1336. *See also, Sigvaris, Inc. v. United States*, 899 F.3d 1308 (Fed. Cir. 2018), wherein the court cited the definitions relied upon by the Court of International Trade in *Sigvaris*, in concluding that "articles specially designed for handicapped persons must be made with the

specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” The Court of Appeals for the Federal Circuit refined this requirement which it found to be incomplete. The court concluded that:

to be “specially designed,” the subject merchandise must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others.

Sigvaris, 899 F.3d 1308.

Finally, the legislative history further aids our analysis of these terms as used in subheading 9817.00.96, HTSUS. The Senate stated in its report that one of the goals of this law was to benefit the handicapped and show U.S. support for the rights of the handicapped. The Senate stated, in relevant part:

By providing for duty-free treatment of articles specially adapted for the blind or other physically or mentally handicapped persons, the committee does not intend that an insignificant adaptation would result in duty-free treatment for an entire relatively expensive article. Otherwise, the special tariff category will create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, the committee intends that, in order for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as clearly to render the article for use by handicapped persons.

S. Rep. No. 97 564, 97th Cong. 2nd Sess. (1982). The Senate was concerned that persons would misuse this tariff provision to avoid paying duties on expensive products. Similarly, in *Danze*, *supra*, the court looked to the legislative history and noted that its interpretation of the terms “specially” and “designed” in *Sigvaris* comported with the legislative intent behind subheading 9817.00.96, HTSUS, that any modification or adaptation be “significant.” Specifically, the court in *Danze* stated:

“articles specially designed for handicapped persons must be made with the specific purpose and intent to be used by or benefit handicapped persons rather than the general public.” *Sigvaris*, 227 F. Supp. 3d at 1336. Any adaptation or modification to an article to render it for use or benefit by handicapped persons must be significant.

See Danze at 14.

CBP has recognized several factors to be utilized and weighed against each other on a case-by-case basis when determining whether a particular product is “specially designed or adapted” for the benefit or use of handicapped persons. *See Implementation of the Nairobi Protocol*, 26 *Cust. Bull. & Dec.* at 243–244. These factors include: (1) the physical properties of the article itself (*i.e.*, whether the article is easily distinguishable by properties of the design, form, and the corresponding use specific to this unique design, from articles useful to non-handicapped persons); (2) whether any characteristics are present that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) whether articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) whether the articles are sold in specialty

stores which serve handicapped individuals; and, (5) whether the condition of the articles at the time of importation indicates that these articles are for the handicapped. *See also Danze, Inc. v. United States*, Slip Op. 18–69 (Ct. Int'l Trade 2018); *Sigvaris, Inc. v. United States*, 227 F.Supp.3d 1327 (2017), *aff'd*, 899 F.3d 1308 (Fed. Cir. 2018). The court in *Sigvaris*, 899 F.3d 1308 (Fed. Cir. 2018), found that “[t]hese factors aid in assessing whether the subject merchandise is intended for the use or benefit of a specific class of persons to a greater extent than for the use or benefit of others.” The court adopted these factors into its analysis.

CBP has previously held that a person suffering from permanent or chronic incontinence is “physically handicapped” as that term is defined in U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS. *See* Headquarters Ruling Letter (“HQ”) HQ W562506, dated October 28, 2002; HQ 560278, dated October 7, 1997; HQ 960056, dated January 30, 1997; and HQ 558958, dated March 25, 1996. In several rulings, CBP noted an article published as a National Institutes of Health Consensus Development Conference Statement, Vol. 7, #5, October 3–5, 1988, by the U.S. Government Printing Office stating that “urinary incontinence, the involuntary loss of urine so severe as to have social and/or hygienic consequences, is a major clinical problem and a significant cause of disability and dependency.” *See* HQ 085094, dated May 10, 1990; HQ 085092, dated May 10, 1990; HQ 085798, dated April 18, 1990; and HQ 085691, dated April 18, 1990.

NY A89600, which was issued on December 9, 1990, is in conflict with HQ 085978, dated March 7, 1990. In our earlier ruling, CBP considered the classification of medical stretch briefs constructed of 91% polyester/9% elastomeric knit fabric. The briefs were to be worn, as in this case, with disposable incontinence pads. The briefs were designed to help keep the pad in place and were intended for limited repetitive use. In HQ 085978, we stated that no evidence had been submitted that the briefs were principally used by individuals with permanent or chronic incontinence, as opposed to individuals suffering from acute or transient incontinence. In NY A89600, it appears that photographs and literature were submitted to support the claim that the medical stretch briefs were principally used to hold disposable and reusable absorbent pads for incontinence sufferers. However, no discussion of the literature appears in the decision. Marketing alone cannot be the basis for distinguishing virtually identical merchandise as “specially designed or adapted” or as not “specially designed or adapted” for the handicapped.

One comment was received in response to the notice of proposed notification of NY A89600. The commenter submits that incontinent fixation pants, which are utilized in a pant and pad system, do exhibit certain features that would cause them to meet the requirements of being “specially designed or adapted” for the use of the handicapped. The features pointed out by the commenter are:

- 1) a deep waistband and seamless side construction;
- 2) elasticized yarns that ensure a tight fit even after multiple washings;
- 3) non-binding hems; and,
- 4) a defined crotch for the placement of the disposable absorbent pad.

The commenter states that the elastic yarns in the fixation pants, *i.e.*, the knit stretch briefs at issue, distinguishes these garments from others due to their placement. The commenter focuses on the elastic/spandex yarns knitted into the deep waistband to hold the garment in place on the body. Further, the commenter states that “elastic/spandex bands are knitted at various points

across the body of the pant to support and hold the shaped pad close to the body . . . [.]” In addition, “[e]lastic/spandex bands are knitted in the base of the leg of the pant to prevent the leg being loose or moving upwards on the leg.” The commenter states: “Clearly these features are purposeful, intentional and necessary to the principal function of an incontinent fixation pant – to securely and as discretely as possible hold an absorbent pad in place.” Although the commenter indicated that “the determinative factor as to whether the item is specially designed or adapted for the use of the handicapped should always rest on the physical properties of the item[,]” the commenter also promoted the sale and marketing of the fixation pants by the importer as probative as to the use of such items by the handicapped.

CBP continues to find that the type of stretch briefs here are not specially designed articles. CBP examines merchandise in its condition as imported. See HQ H185799, dated April 11, 2013; and, HQ H068277, dated December 30, 2010. With regard to factors one, two, and five discussed above, *i.e.*, the physical properties of the articles; whether the articles feature characteristics which create a substantial probability of use by the chronically handicapped; and whether their condition at the time of importation indicates the articles are for the use of the handicapped, the stretch briefs have no apparent design features that dedicate them for the use or benefit of the permanent or chronically handicapped. Features such as the use of elastic/spandex yarns and bands in the knit fabric are insufficient to distinguish these garments as dedicated for a particular use. The use of such yarns in fabric used in the production of underwear is quite common. The deep waistband, seamless side construction, and elasticized yarns hems are found in many underwear garments. For instance, the Jockey® Modern Micro Seamfree® Hipster, Style #2027, is described as featuring “blended microfiber fabric without side seams for smooth comfort. A wide, tonal waistband adds style and a secure fit for total comfort. . . .”² Further, the “Warner’s Women’s No Pinching No Problem Seamless Brief Panties” are described, in relevant part, as follows:

Basic comfort starts at the bottom with these women’s No Pinching No Problem seamless brief panties from Warner’s. Smooth and stretchy so you won’t show panty lines, this underwear also has a wide, flat waistband the helps eliminate muffin top. A full-cut seat completes the design with confident, flattering coverage.³

As for factor three, *i.e.*, whether the articles are imported by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped, and factor four, *i.e.*, whether the articles are sold in specialty stores which serve handicapped individuals, we have no information with regard to the specific manufacturer or distributor of the goods which were the subject of NY A89600. However, substantially similar goods are sold by healthcare supply or retail companies to hold various types of pads in place, not exclusively incontinence pads. Virtually identical pants are marketed for and used by women after childbirth. Hospitals provide the pants to women postpartum as they are made of comfortable, lightweight, stretchable, breathable knit fabric. Such pants are marketed as great for holding incontinence pads, post-surgery dressings, or postpartum maternity

² <https://www.jockey.com/catalog/product/modern-micro-hipster>

³ <https://www.kmart.com/warners-women-s-no-pinching-no-problem-seamless-brief/p-018VA99637012P?selectedFilters=Size%7CL>

pads.⁴ While we refer to advertisements for articles substantially similar, if not nearly identical to the merchandise at issue, we find such goods advertised for multiple uses, as reusable and disposable, and for conditions that may be acute or transient. Although the determining factor is whether the articles are specially designed or adapted for the use or benefit of handicapped individuals, a consideration of the use of the merchandise and of merchandise of the same class or kind is enlightening as to whether the merchandise has been specially designed or adapted.

With regard to the commenter's belief that the sale and marketing of the fixation pants by the importer is probative as to the use of such items by the handicapped, we agree that such information is informative. However, it is not determinative. As the court in *Sigvaris, supra*, stated:

to be "specially designed," the subject merchandise must be intended for the use or benefit of a specific class of persons to an extent greater than for the use or benefit of others.

The sale and marketing of fixation pants by an importer will not outweigh the sales and marketing of substantially similar, if not nearly identical, merchandise in an assessment of whether fixation pants are intended for the use or benefit of the handicapped to a greater extent than for the use or benefit of other members of the general public.

With regard to the last factor we consider, *i.e.*, whether the condition of the articles at the time of importation indicates that these articles are for the handicapped, we note that the stretch briefs were imported alone, without any pads with which they were to be used. In their condition as imported, they were simply knit stretch pants.

CBP has considered incontinence products that it concluded were entitled to duty free treatment under subheading 9817.96, HTSUS. In HQ 557529, dated March 8, 1994, the article at issue was an institutional adult diaper which featured a water-resistant elasticized "channel" system formed by either porous polyester or cotton fabric stitched over the center of the diaper. The patent-pending channel was stated to serve as a temporary container for moisture not yet absorbed by the disposal pad, secured by the channel, or as a final barrier against leaks if the pad filled to capacity. Based upon the design of the diaper and the channel system to prevent leakage, and the design and construction of the adult pull-on pants in HQ 560278, CBP found these articles qualified for duty-free treatment under subheading 9817.00.96, HTSUS, as articles specially designed or adapted for the use or benefit of the handicapped. In HQ 560278, dated October 7, 1997, CBP found that the adult pull-on pants were constructed with waterproof vinyl or rubber fabric, tighter than normal waist and leg bindings and the absence of side or crotch seams. HQ 560278 cited to Treasury Decision 92-77 (26 Cust. Bull. 1, August 26, 1992), wherein CBP stated, with regard to an article's eligibility for duty-free treatment under the provisions of the Nairobi Protocol:

A primary factor to be considered concerns the *physical properties* of the article itself, *i.e.*, whether the article is easily distinguishable, by properties of the design and the corresponding use specific to this unique design from articles useful to non-handicapped individuals. If an article is solely

⁴ See www.vitalitymedical.com/medibrief-seamless-knit.html; www.amazon.com/Boston-Medical-Nylon-Brief-Disposable/dp/B00F9XGU8E; and, <https://www.amazon.com/Womens-Seamless-Postpartum-Maternity-Underwear/dp/B016QO93N1>.

dedicated to use by the handicapped, *e.g.*, pacemakers or hearing aids, then this is conclusive evidence that the articles are “specially designed or adapted” for the handicapped for purposes of the Nairobi Protocol.

Unlike the articles in HQ 560278 or HQ 557529, the stretch briefs at issue, like those in HQ 085978, exhibit no special design or construction elements which distinguish these garments for use, principally or primarily, by individuals suffering from permanent or chronic incontinence. The briefs in HQ 085978 differed from the stretch briefs at issue here in that washing the briefs was not recommended. However, whether the briefs are washable or not is not the issue. These stretch briefs are substantially similar, if not identical, to pants marketed for use with incontinence pads, feminine pads, or wound dressings. The multiple uses for which the stretch briefs at issue may be utilized, and the lack of any special design or adaptation which indicates the stretch briefs are principally for the use of handicapped individuals precludes these stretch briefs from classification in subheading 9817.00.96, HTSUS.

HOLDING:

The stretch briefs at issue, self-contour/product no. 90, standard/product no. 32, classic/product no 31 and premium/products no. 63 and 67, are not eligible for duty-free treatment under subheading 9817.00.96, HTSUS, as articles specially designed or adapted for the handicapped.

EFFECT ON OTHER RULINGS:

NY A89600, dated December 9, 1996, is hereby MODIFIED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**REVOCAION OF TWO RULING LETTERS AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DECORATIVE BRIDAL
ACCESSORIES**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of two ruling letters, and of revocation of treatment relating to the tariff classification of decorative bridal accessories.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking two ruling letters concerning tariff classification of decorative bridal accessories under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 42, on October 17, 2018. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Reema Radwan, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–7703.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other

information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 42, on October 17, 2018, proposing to revoke two ruling letters pertaining to the tariff classification of decorative bridal accessories. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") H84824, dated August 10, 2001, and NY E80988, dated April 20, 1999, CBP classified decorative bridal accessories, consisting of imitation pearl stamens and paper stems held together with a twist tie, in heading 7116, HTSUS, specifically in subheading 7116.20.40, HTSUS, which provides for, "articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed): Of precious or semiprecious stones (natural, synthetic or reconstructed): Other: Of semiprecious stones (except rock crystal): Other." CBP has reviewed NY H84824 and NY E80988, and has determined the ruling letters to be in error. It is now CBP's position that decorative bridal accessories are properly classified, in heading 6702, HTSUS, specifically in subheading 6702.90.65, HTSUS, which provides for "Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers foliage or fruit: Of other materials: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY H84824 and NY E80988 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H293469, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 27, 2018

ALLYSON MATTANAH
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H293469

November 27, 2018

OT:RR:CTF:CPMM H293469 RGR

CATEGORY: Classification

TARIFF NO.: 6702.90.65

Ms. JULIE SCOGGAN
EVANS AND WOOD & Co., Inc.
612 E. DALLAS RD., SUITE 200
GRAPREVINE, TX 76051

RE: Revocation of NY H84824 and NY E80988; tariff classification of decorative bridal accessories

DEAR Ms. SCOGGAN:

This letter is in reference to two ruling letters issued by U.S. Customs and Border Protection (“CBP”) concerning the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of decorative bridal accessories under heading 7116, HTSUS. Specifically, in New York Ruling Letter (“NY”) H84824, dated August 10, 2001, CBP classified decorative bridal accessories consisting of imitation pearl stamens and paper stems held together with a twist-tie in subheading 7116.20.40, HTSUS. We have reviewed NY H84824 and find it to be incorrect. We have also reviewed NY E80988, dated April 30, 1999, concerning substantially similar merchandise. For the reasons set forth below, we are revoking NY H84824 and NY E80988.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 42 on October 17, 2018, proposing to revoke NY H84284 and NY E08988, and any treatment accorded to substantially similar transactions. No comments were received in response to this notice.

FACTS:

In NY H84824, CBP described the merchandise as follows:

The submitted samples are two styles of decorative bridal accessories consisting of imitation pearl stamens made of talc, dextrine and water, which are attached to paper stems. The stamens are held together with a twist-tie and packaged in a plastic bag. Talc is considered a semiprecious stone by Customs.

In NY E80988, CBP described the merchandise as follows:

The submitted sample, Item #614065 Pearl Stamen Bunch, consists of imitation pearl stamens made of powder of talc which are attached to paper stems at both ends. Each stamen measures approximately 2 ½ inches in length. The stamens are held together with a twist-tie and packaged in a plastic bag. Powder of talc is considered a semiprecious stone by Customs.

ISSUE:

Whether the decorative bridal accessories are classifiable under heading 6702, HTSUS, as “artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit,” or under heading 7116, HTSUS, as “articles of natural or cultured pearls, precious or semi-precious stones (natural, synthetic or reconstructed).”

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRI”). GRI 1 provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes....” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The 2018 HTSUS provisions under consideration are as follows:

6702 Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:

* * *

7116 Articles of natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed):

* * *

Pursuant to Note 1 of Chapter 71, HTSUS, all articles consisting wholly or partly of semiprecious stones (natural, synthetic or reconstructed) are to be classified in Chapter 71.

The notes to chapter 67 state, in pertinent part, the following:

3. Heading 6702 does not cover:

* * *

(b) Artificial flowers, foliage or fruit of pottery, stone, metal, wood or other materials, obtained in one piece by molding, forging, carving, stamping or other process, or consisting of parts assembled otherwise than by binding, gluing, fitting into one another or similar methods.

In understanding the language of the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the Harmonized System at the international level. See T.D. 89–90, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The ENs to heading 6702 state, in relevant part that the heading covers:

(2) Parts of artificial flowers, foliage or fruit (e.g., pistils, stamens, petals, calyces, leaves and stems).

* * *

The articles of this heading are mainly used for decoration (e.g., in houses or churches), or as ornaments for hats, apparel, etc.

* * *

The ENs to heading 71.03 state, in pertinent part, that the heading for precious and semi-precious stones excludes “Steatite (unworked, heading 25.26; worked, heading 68.02).” Steatite is a compact form of talc.¹ Accordingly, the EN to heading 71.03 also excludes articles of talc.

¹ <https://www.britannica.com/science/steatite> (last visited on January 16, 2018).

The ENs to heading 71.16 state, in pertinent part, the following:

This heading covers all articles (**other than** those **excluded** by Notes 2 (B) and 3 to this Chapter), wholly of natural or cultured pearls, precious or semi-precious stones, or consisting partly of natural or cultured pearls or precious or semi-precious stones, but **not** containing precious metals or metals clad with precious metal (**except** as minor constituents) (see Note 2 (B) to this Chapter).

Talc is a mineral rich in hydrous magnesium silicate.² Because talc is not a precious or semiprecious stone, it is not classifiable in heading 7116, HTSUS, which covers “articles of natural or culture pearls, precious or semiprecious stones (natural, synthetic or reconstructed.”³ Thus, the subject merchandise is not classifiable in heading 7116, HTSUS, as “articles of natural or culture pearls, precious or semiprecious stones (natural, synthetic or reconstructed).”

Heading 6702, HTSUS, provides for “artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage and fruit.” The subject merchandise, consisting of imitation pearl stamens and paper stems with a twist-tie, is assembled by binding, gluing and fitting, all processes permitted by note 3(b) to chapter 67. It falls squarely within the meaning of parts of artificial flowers or foliage in heading 6702, HTSUS, as the ENs to heading 67.02 specifically identify “stamens” and “stems,” as parts of artificial flowers, foliage and fruit falling under this heading. Lastly, the merchandise is used in bridal ornaments, a use mentioned in EN 67.02. Therefore, pursuant to GRI 1, the merchandise is described, *eo nomine*, in heading 6702, HTSUS, as parts of artificial flowers. At the subheading level, the merchandise is classified pursuant to GRIs 1 and 6 in subheading 6702.90.65, HTSUS, as “[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [of] other materials: [o]ther: [o]ther.”

HOLDING:

Pursuant to GRIs 1 and 6, the subject decorative bridal accessories are classified in heading 6702, HTSUS, specifically in subheading 6702.90.65, HTSUS, which provides for “Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers foliage or fruit: Of other materials: Other: Other.” The 2018 column one, general rate of duty is 17% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY H84824, dated August 10, 2001, and NY E80988, dated April 30, 1999, are revoked.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

² See EN to heading 25.26.

³ The Harmonized System Committee (“HSC”) deleted the term “talc” from the Annex to the ENs to chapter 71 in 2012, which identifies precious and semiprecious stone to reconcile the discrepancy in the ENs to heading 71.03 excluding steatite (a form of talc) from the heading as a semi-precious stone in favor of heading 68.02, in accordance with note 2 to chapter 68.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

Cc: Ms. Ruby Wood
Evans and Wood & Co., Inc.
P.O. Box 610005
DFW Airport, TX 752621

19 CFR PART 177**REVOCAION OF ONE RULING LETTER AND
REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A SMARTPHONE
ACCESSORY CONSISTING OF A KEYBOARD, LCD AND
TRACKPAD**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of one ruling letter and of revocation of treatment relating to the tariff classification of a smartphone accessory consisting of a keyboard, LCD and trackpad.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a smartphone accessory consisting of a keyboard, LCD and trackpad under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 39, on September 26, 2018. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Electronics, Machinery, Automotive and International Nomenclature Branch, Regulations and Rulings, Office of Trade, at (202) 325–0113.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 39, on September 26, 2018 proposing to revoke one ruling letter pertaining to the tariff classification of a smartphone accessory consisting of a keyboard, LCD and trackpad. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N282589, dated February 3, 2017, CBP classified a smartphone accessory consisting of a keyboard, LCD and trackpad in heading 8543, HTSUS, specifically in subheading 8543.70.99, HTSUS, which provides for “[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter: Other machines and apparatus: Other.” CBP has reviewed NY N282589 and has determined the ruling letter to be in error. It is now CBP's position that the smartphone accessory consisting of keyboard, LCD and trackpad is properly classified, in heading 8543, HTSUS, specifically in subheading 8453.70.60, HTSUS, which provides for “[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; Other machines and apparatus: Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N282589 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) 286666, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 19, 2018

GREG CONNOR
for
MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H286666

November 19, 2018

CLA-2 OT:RR:CTF:CPM H286666 SK

CATEGORY: Classification

TARIFF NO.: 8543.70.60

MATT NAKACHI, ESQ.

JUNKER & NAKACHI

*ONE MARKET SPEAR TOWER, STE. 3600**SAN FRANCISCO, CA 94105*

RE: Revocation of NY N282589; tariff classification of the “Superbook”;
smartphone accessory

DEAR MR. NAKACHI:

This letter pertains to New York Ruling Letter (NY) N282589, issued on February 3, 2017 to Great World Customs Service on behalf of Andromium, Inc. DBA Sentio, in which U.S. Customs and Border Protection (CBP) classified an article identified as the “Superbook” under subheading 8543.70.99, Harmonized Tariff System of the United States (HTSUS). Upon reconsideration, CBP has determined NY N282589 to be in error and, for the reasons set forth below, that ruling is hereby revoked.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke NY N282589 was published on September 26, 2018, in Volume 52, Number 39 of the Customs Bulletin. No comments were received in response to the proposed action.

FACTS:

The merchandise under consideration is referred to as the Sentio Superbook. The subject article measures 29 centimeters (cm) by 19.5 cm and consists of a 1366 x 768 liquid crystal display (LCD), multi-touch track pad, battery, and a full QWERTY keyboard within a plastic folding enclosure. The Superbook closely resembles a traditional laptop personal computer (PC). However, unlike a traditional laptop, the Superbook does not contain a processor, program storage, a speaker, or a microphone. The Superbook is imported packaged with a USB cable and a charging adapter. The Superbook can be used with any device, such as smartphones and tablet computers, running an Android operating system. Counsel submits that desktop computers and laptops can also be loaded with an Android-compatible emulator. An Android powered operating system must have software installed that allows it to recognize and interact with the Superbook. This software, the Sentio app, can be downloaded and installed onto an Android smartphone or other Android device and the Superbook is connected to the device via a USB cable. Once the devices are connected and the app is started, the user’s phone display is presented on the Superbook LCD and the user may interact with the smartphone’s applications directly from the Superbook’s trackpad and keyboard. The Sentio app allow the user to interact with their smartphone in a manner similar to an automatic data processing (ADP) machine, such as a laptop or desktop PC. The processing and storage of all applications is performed from and stored onto the user’s smartphone.

LAW AND ANALYSIS:

Classification under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods will be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 will then be applied in order. GRI 6 provides that classification of goods at the subheading level will be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the preceding GRIs on the understanding that only subheadings at the same level are comparable.

The following headings and subheadings of the HTSUS are under consideration:

| | |
|------------|--|
| 8471 | Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: * * * |
| 8543 | Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: |
| 8543.70 | Other machines and apparatus: |
| 8543.70.60 | Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks... * * * |
| | Other: |
| | Other: |
| 8543.70.99 | Other... |

In NY N282589, CBP classified the Superbook under subheading 8543.70.99, HTSUS. In your request for reconsideration of NY N282589, you posit that based upon additional information provided, the Superbook is properly classifiable under a number of different HTSUS provisions, including subheading 8471.60.20, HTSUS, and subheading 8543.70.60, HTSUS. Specifically, you state that the Superbook is not designed for sole use with a smartphone and the device is “[C]apable of use with any number of other android compatible devices, including (a) the automatic data processing (‘ADP’) component of an android smartphone (a composite machine consisting of an ADP and a phone); (b) a computer (itself an ADP machines); or (c) a laptop computer; or (d) an android tablet computer.”

Regarding your assertion that the Superbook is classifiable under heading 8471, HTSUS, as a unit of an ADP system, we note that Note 5 to Chapter 84 provides:

5. (A) For the purposes of heading 8471, the expression “automatic data processing machines” means machines capable of:
 - (i) Storing the processing program or programs and at least the data immediately necessary for the execution of the program;
 - (ii) Being freely programmed in accordance with the requirements of the user;

- (iii) Performing arithmetical computations specified by the user; and
- (iv) Executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.

(C) Subject to paragraphs (D) and (E) below, a unit is to be regarded as being part of an automatic data processing system if it meets all of the following conditions:

- (i) It is of **a kind solely or principally used in an automatic data processing system**;
- (ii) It is connectable to the central processing unit either directly or through one or more other units; and
- (iii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471.

However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (C) (ii) and (C) (iii) above, are in all cases to be classified as units of heading 8471. (Emphasis added)

Although the Superbook may be used with Android-compatible devices installed with the Sentio app, its utility in this context is limited. The Superbook's keyboard, display, and trackpad functions duplicate what most PCs, laptops and tablets already offer – with the exception that perhaps some users may prefer to type on the Superbook's QWERTY keyboard rather than a tablet touch screen. We further note that no substantiating evidence was provided by counsel regarding the Superbook's use with Android-compatible devices other than Android smartphones. In this regard it is noted that Sentio's website, as well as Sentio's Kickstarter Fund website, describes the Superbook's primary purpose as enabling a smartphone to be used in the manner of a laptop by providing a keyboard, LCD, and trackpad. Sentio's website markets the Superbook as follows:

Your Phone Doubles As Your Laptop. Get things done anywhere with Superbook, the “Laptop Body” that transforms your phone into a laptop.

* * *

With Superbook, your Android phone is finally your laptop.

* * *

New Phone, New Laptop. Superbook is compatible with all modern Android devices. Get a new phone? It's like getting a new laptop free.

See <https://www.sentio.com/https>: [site last visited November 21, 2017].

The Kickstarter website for this device states:

What is the Superbook?

At its core, the Superbook is a smart laptop shell that provides a large screen, keyboard and multi-touch trackpad, 8+ hours of battery, and

phone charging capabilities. When plugged into your Android smartphone, it launches our app to deliver the full laptop experience. Think of it as the ultimate accessory for your smartphone.

See <https://www.kickstarter.com/projects/andromium/the-superbook-turn-your-smartphone-into-a-laptop-f> [site last visited November 17, 2017].

As the Superbook is designed primarily to interface with smartphones and its operation would be superfluous with respect to ADP machines, we find that it is not of a kind solely or principally used in an ADP system, and thus does not satisfy the requirements set forth in Note 5(C)(i) to Chapter 84. Therefore, classification under heading 8471, HTSUS, is precluded.

One of your other classification theories is partially in agreement with NY N282589 inasmuch as the subject Superbook is provided for under heading 8543, HTSUS, but properly classified pursuant to GRI 6 under subheading 8543.70.60, HTSUS, as an article "...designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks" rather than subheading 8543.70.99, HTSUS.

In this regard, we note that EN 85.43, provides, in pertinent part:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

The electrical appliances and apparatus of this heading must have individual functions. The introductory provisions of Explanatory Note to heading 84.79 concerning machines and mechanical appliances having individual functions apply, *mutatis mutandis*, to the appliances and apparatus of this heading.

Based on the foregoing, we find that the Superbook performs the individual function of enabling a smartphone to emulate the capabilities of a laptop or tablet computer. The Superbook is not covered by any other heading in Chapter 85 or elsewhere in the Nomenclature, and therefore is properly classified under heading 8543, HTSUS. As the Superbook is an electrical machine designed for connection to telephonic apparatus (i.e. a smartphone), is it properly classifiable under subheading 8543.70.60, HTSUS, pursuant to GRI 6. Furthermore, we note that this conclusion is consistent with a previous decision in which CBP classified a substantially similar device, identified as the Redfly Mobile Companion, in NY N024935, dated April 7, 2008. In that ruling, CBP determined that the subject article, described as an accessory to select models of Windows Mobile Smart Phones and consisting of a QWERTY keyboard, display screen and track pad, was classifiable under subheading 8543.70.60, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the Superbook is classified in heading 8543, HTSUS, and specifically in subheading 8453.70.60, HTSUS, which provides for "[E]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; Other machines and appa-

tus: Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks... ." The applicable rate of duty is free.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

NY N282589, dated February 3, 2017, is hereby REVOKED.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

GREG CONNOR

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

19 CFR PART 177**MODIFICATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF DECORATIVE WOODEN
NUTCRACKERS**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of two ruling letters, and of revocation of treatment relating to the tariff classification of decorative wooden nutcrackers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying two ruling letters concerning tariff classification of decorative wooden nutcrackers under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 27, on July 5, 2018. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Alben Peters, Chemicals, Petroleum, Metals and Miscellaneous Articles Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other

information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 27, on July 5, 2018, proposing to modify two ruling letters pertaining to the tariff classification of decorative wooden nutcrackers. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In New York Ruling Letter ("NY") I82063, dated June 17, 2002, CBP classified a decorative wooden nutcracker representing Dorothy from "The Wizard of Oz" in heading 9505, HTSUS, specifically in subheading 9505.10.15, HTSUS, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Of wood." CBP classified the remaining decorative wooden nutcrackers in NY I82063 representing Cowardly Lion, Scarecrow, and Tin Man from "The Wizard of Oz" and the decorative wooden nutcrackers in NY I82064, dated June 17, 2002, in heading 4420, specifically in subheading 4420.10.00, HTSUS, which provides for "Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Statuettes and other ornaments, of wood" but CBP's analysis was incorrect. CBP has reviewed NY I82063 and NY I82064, and has determined these ruling letters to be in error. It is now CBP's position that all the subject decorative wooden nutcrackers are properly classified in heading 4420, HTSUS, specifically in subheading 4420.10.00, HTSUS, which provides for "Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of

furniture not falling within chapter 94: Statuettes and other ornaments, of wood” and it is immaterial whether the nutcrackers were “human” or “non-human” type.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY I82063 and NY I82064, and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (“HQ”) H143395, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: October 24, 2018

ALLYSON MATTANAH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H143395

October 24, 2018
OT:RR:CTF:CPMM H143395 APP
CATEGORY: Classification
TARIFF NO.: 4420.10.0000

MS. RITA PITTS
DILLARD'S, INC.
1600 CANTRELL ROAD
LITTLE ROCK, AR 72201

RE: Modification of NY I82063 and NY I82064; Tariff classification of decorative wooden nutcrackers from Germany

DEAR MS. PITTS:

This is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York Ruling Letters (“NY”) I82063 and I82064, dated June 17, 2002, regarding the classification, under the Harmonized Tariff Schedule of the United States (“HTSUS”), of decorative wooden nutcrackers.

In NY I82063, CBP classified a wooden nutcracker representing Dorothy from “The Wizard of Oz” under heading 9505, HTSUS, specifically under subheading 9505.10.15, HTSUS, which provides for “Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Articles for Christmas festivities and parts and accessories thereof: Christmas ornaments: Other: Of wood.” The remaining wooden nutcrackers in NY I82063 representing Cowardly Lion, Scarecrow, and Tin Man from “The Wizard of Oz” were classified under heading 4420, HTSUS, specifically under subheading 4420.10.00, HTSUS, which provided for “Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Statuettes and other ornaments, of wood.” CBP’s reasoning in NY I82063 was that only “human” nutcrackers can be considered “festive” for tariff classification purposes.

In NY I82064, CBP classified a wooden snowman nutcracker and a wooden rat nutcracker under heading 4420, HTSUS, specifically under subheading 4420.10.00, HTSUS. Even though CBP correctly classified the two nutcrackers in NY I82064, CBP incorrectly concluded that “non-human” nutcrackers cannot be considered “festive” articles for tariff classification purposes.

We have determined that both rulings are incorrect and for the reasons set forth below we hereby modify NY I82063 (the tariff classification of the Dorothy nutcracker and the conclusion that only human nutcrackers can be “festive”) and NY I82064 (the conclusion that non-human nutcrackers cannot be “festive”).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published in the *Customs Bulletin*, Volume 52, Number 27, on July 5, 2018, proposing to modify NY I82063 and NY I82064, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to this notice.

FACTS:

The merchandise in NY I82063 consists of four decorative wooden nutcrackers ornamented with paint, fabric clothing, and/or accessories of various materials, representing Dorothy, Cowardly Lion, Scarecrow, and Tin Man from the 1939 film "The Wizard of Oz." A lever on the back can be operated to make the mouth of each figure move. Style number ZDIES1805, Cowardly Lion (18 inches high), is a wooden lion figure with a crown dressed in a fabric robe. Style number ZDIES1806, Dorothy figure (15 inches high), is in a fabric dress. Style number ZDIES0961, Scarecrow figure (17 inches high), is in fabric apparel. Style number ZDIES0960, Tin Man (19 inches high), is painted in silver to simulate a tin suit.

The merchandise in NY I82064 consists of two decorative wooden nutcrackers ornamented with paint, fabric clothing, and/or accessories of various materials. A lever on the back can be operated to make the chin of each move. Style number 227T3137GS is a wooden snowman figure (8.5 inches high) with a black hat. Style number S1849 is a wooden standing rat figure (16 inches high) dressed in a fabric vest, jacket, and hat, representing Herr Ratty-Wind from the children's novel "The Wind in the Willows" by Kenneth Grahame.

ISSUE:

Whether the instant six nutcrackers are classified in heading 4420, HTSUS, as statuettes or other ornaments, of wood, or in heading 9505, HTSUS, as Christmas ornaments, of wood.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 2(b) provides that the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. GRI 3(a) states that goods should be classified according to the heading, which affords the most specific description, unless the multiple headings under consideration refer to only part of the materials or substances contained in goods that are mixed or composite, or to only part of the items in a set put up for retail sale. GRI 3(b) provides that "composite goods consisting of different materials or made up of different components" are to be classified "as if they consisted of the material or component which gives them their essential character,"

and where this is not possible, “under the heading which occurs last in numerical order among those which equally merit consideration.”

Pursuant to GRI 6, classification at the subheading level uses the same rules, *mutatis mutandis*, as classification at the heading level.

The HTSUS provisions under consideration in this case are as follows:

- 4420 Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94:
- 9505 Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:

Pursuant to Note 1(p) to chapter 44, HTSUS, this chapter does not cover articles of chapter 95, HTSUS.

Note 1(w) to chapter 95, HTSUS, states that this chapter does not cover “[t]ableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen and similar articles having a utilitarian function (classified according to their constituent material).”¹

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

EN 44.20, provides, in relevant part, that:

This heading covers panels of wood marquetry and inlaid wood, including those partly of material other than wood.

The articles of this heading may be made of ordinary wood or of particle board or similar board, fibreboard, laminated wood or densified wood (see Note 3 to this Chapter).

It also covers a wide variety of articles of wood (including those of wood marquetry or inlaid wood), generally of careful manufacture and good finish, such as: small articles of cabinetwork (for example, caskets and jewel cases); small furnishing goods; decorative articles. Such articles are classified in this heading,

¹ Formerly Note 1(v) to chapter 95, HTSUS, added in 2007.

even if fitted with mirrors, **provided** they remain essentially articles of the kind described in the heading. Similarly, the heading includes articles wholly or partly lined with natural or composition leather, paperboard, plastics, textile fabrics, etc., **provided** they are articles essentially of wood.

The heading includes: ... (3) Statuettes, animals, figures and other ornaments.

EN 95.05, states, in relevant part, that heading 9505 covers:

(A) **Festive, carnival or other entertainment articles**, which in view of their intended use are generally made of non-durable material. They include:

(1) Festive decorations used to decorate rooms, tables, etc. (such as garlands, lanterns, etc.); decorative articles for Christmas trees (tinsel, coloured balls, animals and other figures, etc); cake decorations which are traditionally associated with a particular festival (e.g., animals, flags).

(2) Articles traditionally used at Christmas festivities, e.g., artificial Christmas trees, nativity scenes, nativity figures and animals, angels, Christmas crackers, Christmas stockings, imitation yule logs, Father Christmases ...

The heading **excludes** statuettes, statues and the like of a kind used for decorating places of worship.

The heading also **excludes** articles that contain a festive design, decoration, emblem or motif and have a utilitarian function, e.g., tableware, kitchenware, toilet articles, carpets and other textile floor coverings, apparel, bed linen, table linen, toilet linen, kitchen linen.

First, we will determine whether the instant decorative wooden nutcrackers are classified in heading 9505, HTSUS. If they are classified in heading 9505, HTSUS, they will be excluded from heading 4420, HTSUS, by application of Note 1(p) to chapter 44, HTSUS. Heading 9505, HTSUS, covers decorative articles for Christmas trees and articles traditionally used at Christmas festivities. *See* EN 95.05. To be classified as “festive” under chapter 95, HTSUS, an article must satisfy two criteria: (1) It must be closely associated with a festive occasion and (2) the article is used or displayed principally during that festive occasion. *See Park B. Smith, Ltd. V. United States*, 347 F.3d 922, 927–29 (Fed. Cir. 2003) (*citing Midwest of Cannon Falls v. United States*, 122 F.3d 1423, 1427–29 (Fed. Cir. 1997)). If the use or display of the article at other times would not be “aberrant” then it does not satisfy the criteria for “festive” articles under chapter 95,

HTSUS. *Park B. Smith*, 347 F.3d at 929. The utilitarian function of articles does not preclude their classification as “festive” articles under heading 9505, HTSUS. See *Michael Simon Design, Inc. v. United States*, 501 F.3d 1303 (Fed. Cir. 2007), *aff’d*, 452 F. Supp. 2d 1316 (CIT 2006).

In *Midwest of Cannon Falls*, 122 F.3d at 1423, the Court of Appeals for the Federal Circuit (“CAFC”) classified decorative nutcrackers (Santa, soldier, king, presidents, athletes, and professionals), whose form and design were similar to that of the soldier/king nutcracker from Pyotr Ilyich Tchaikovsky’s “The Nutcracker,” a ballet adaptation of E. T. A. Hoffmann’s story “The Nutcracker and the Mouse King,” under heading 9505, HTSUS, as wooden festive articles. The nutcrackers were sold to customers mainly during the Christmas season and lacked functionality and suitability as decorative items outside the Christmas holiday season. In *Wilton Indus. v. United States*, 31 CIT 863, 907–908 (2007), the CIT held that a cookie cutter in the shape of a traditional nutcracker sold with Christmas-themed cookie cutters was a symbol “closely associated with” Christmas and “so intrinsically linked to Christmas” that its use featuring this motif at other times of the year would be “aberrant.” The court also held that cookie cutters in the shape of an unadorned snowman, a star, a drum, a rocking horse, and a teddy bear were not similarly “closely associated” with Christmas and their use at other times would not be “aberrant.”

The subject six nutcrackers are decorative wooden figures representing “The Wizard of Oz” characters, a snowman, and Herr Ratty-Wind from “The Wind in the Willows.” Wooden nutcrackers date back to the 1800s and nowadays they are manufactured to meet the demands of collectors year-round.² Collectors look for the traditional toy soldier/king nutcracker from “The Nutcracker” ballet, which has become a Christmas tradition, as well as other designs such as royalty, bakers, chimney sweeps, and policemen nutcrackers. Unlike “The Nutcracker” ballet type soldier/king nutcracker, the instant nutcrackers are not closely associated with the Christmas holiday. See *Wilton Indus.*, *supra*. Even if the instant wooden figures are used or displayed principally during the Christmas holiday season, their use or display at other times would not be “aberrant.” Their use may not be confined to the holiday season and therefore they are not closely associated only with Christmas. Just like the cookie cutters in the shape of an unadorned snowman, a star, a drum, a rocking horse, and

² See Nutcracker Museum, The History of Nutcrackers, <http://nutcrackermuseum.com/history.htm> (last visited Mar. 23, 2018).

a teddy bear in *Wilton Indus.*, *supra*, the instant wooden figures are not associated with the Christmas holiday and can be used or displayed at other times of the year.

In HQ 962453, dated November 3, 1999, CBP clarified that an ordinary snowman is “not automatically an accepted symbol for the recognized holiday of Christmas” and in NY 872310, dated April 6, 1992, CBP classified the same characters (Cowardly Lion, Dorothy, Tin Man, and Scarecrow) from “The Wizard of Oz” as statuettes and other ornaments of wood of heading 4420, HTSUS. Just like the wooden figures in NY 872320, the instant four nutcrackers from “The Wizard of Oz” are not associated with the Christmas holiday season. The remaining two wooden figures, a snowman associated with the winter season and the Herr Ratty-Wind character from the children’s novel “The Wind in the Willows,” are also not associated with the Christmas holiday season.

Since the instant six wooden figures are not closely associated with the Christmas holiday and their use or display at other times would not be “aberrant,” they are not classifiable under heading 9505, HTSUS. It is immaterial whether they are “human” or “non-human” nutcrackers. *See Midwest of Cannon Falls, supra* (the CAFC did not distinguish between human and non-human nutcracker characters).

It is our determination that the instant six nutcrackers are wooden statuettes covered by heading 4420, HTSUS. *See EN 44.20, supra*. By application of GRIs 1 and 3(b), even though they are ornamented with paint, fabric clothing, and/or accessories of various materials, they are classified as statuettes of wood consistent with EN 44.20 because they are essentially of wood. CBP has previously classified wooden nutcrackers in heading 4420, HTSUS, specifically under subheading 4420.10.00, HTSUS. *See NY M84661*, dated July 25, 2006 (classifying three styles of decorative wooden nutcrackers made of wood, except for the heads and hands, which were made of plush textile). It should be further noted that heading 4420, HTSUS, is more specific than heading 9505, HTSUS, because the term “articles of wood” covers a narrower set of items and more clearly identifies the wooden figures than the term “festive articles.” *See Russ Berrie & Co. v. United States*, 381 F.3d 1334 (Fed. Cir. 2004) (concluding that heading 7117, HTSUS, is more specific than heading 9505, HTSUS, because the description “imitation jewelry” is by name while the description “festive article” is by class).

Therefore, the wooden snowman and Herr Ratty-Wind nutcrackers in NY I82064 and the wooden Cowardly Lion, Scarecrow and Tin Man nutcrackers in NY I82063 were correctly classified in heading 4420,

HTSUS. The Dorothy nutcracker in NY I82063, which was incorrectly classified in heading 9505, HTSUS, should be classified in heading 4420, HTSUS.

HOLDING:

By application of GRIs 1, 3(b), and 6, all nutcrackers in NY I82063 and NY I82064 are classified in heading 4420, specifically under subheading 4420.10.00, which provides for “Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94: Statuettes and other ornaments, of wood.”³ The 2018 column one, duty rate is 3.2% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided at <https://hts.usitc.gov/current>.

EFFECT ON OTHER RULINGS:

NY I82063, dated June 17, 2002, is MODIFIED with respect to the tariff classification of the Dorothy wooden nutcracker and the tariff classification analysis.

NY I82064, dated June 17, 2002, is MODIFIED with respect to the tariff classification analysis.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

ALLYSON MATTANAH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

³ This is consistent with the criteria set forth in *Park B. Smith*, 347 F.3d at 927–29, *supra*. It is immaterial whether the nutcrackers are of “human” type or “non-human” type.

**REVOCATION OF ONE RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A MEN'S JACKET**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of a men's jacket.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking one ruling letter concerning tariff classification of a men's jacket under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 42, on October 17, 2018. No comments were received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Yuliya A. Gulis, Food, Textiles and Marking Branch, Branch, Regulations and Rulings, Office of Trade, at (202) 325–0042.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 42, on October 17, 2018, proposing to

revoke New York Ruling Letter (NY) N288630, dated November 30, 2017, pertaining to the tariff classification of a men's jacket. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N288630, CBP classified a men's garment in heading 6110, HTSUS, specifically in subheading 6110.30.3053, HTSUS, which provides for "sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: men's or boys': other." CBP has reviewed NY N288630 and has determined the ruling letter to be in error. It is now CBP's position that the men's garment in question is properly classified, in heading 6101, HTSUS, specifically in subheading 6101.30.2010, HTSUS, which provides for "men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers, and similar articles, knitted or crocheted, other than those of heading 6103: Of man-made fibers: Other: Other: Men's."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N288630 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter ("HQ") H296342, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 19, 2018

ANDREW LANGREICH
For

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H296342

November 19, 2018

OT:RR:CTF:FTM H296342 YAG

CATEGORY: Classification

TARIFF NO.: 6101.30.20

MS. ANH HALLIBURTON
DESIGN RESOURCES, INC.
7007 COLLEGE BLVD., SUITE 700
OVERLAND PARK, KS 66211

RE: Revocation of NY N288630; Classification of men's jacket

DEAR MS. HALLIBURTON:

This letter is to inform you that U.S. Customs and Border Protection ("CBP") has reconsidered New York Ruling Letter ("NY") N288630, issued to Design Resources, Inc. on November 30, 2017. In NY N288630, CBP classified a men's garment under subheading 6110.30.3053, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: of man-made fibers: other: other: other: other: other: men's or boys': other." We have reviewed NY N288630 and found it to be incorrect. For the reasons set forth below, we are revoking this ruling. The sample will be returned to you.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 42 on October 17, 2018, proposing to revoke NY N288630, and any treatment accorded to substantially similar transactions. No comments were received in response to that notice.

FACTS:

In NY N288630, the garment was described as follows:

The submitted sample, Style J17-00014, is a men's cardigan constructed from a bonded fabric consisting of an outer layer of 100% polyester, knit fabric that measures 16 stitches per two centimeters counted in the horizontal direction, a middle layer of polyurethane film, and an inner layer of 100% polyester, microfleece knit fabric that measures 25 stitches per two centimeters counted in the horizontal direction and is brushed on its inner surface. The polyurethane film is not visible in cross section. Style J17-00014 has a self-fabric stand-up collar bordered with elasticized edging, a full front opening with a storm flap and a zippered closure, a zippered pocket on the right chest, long sleeves with elasticized edging on the cuffs, zippered side entry pockets below the waist, mesh knit pocket bags, a small heat seal logo on the bottom right front panel, and a hemmed bottom with a curved tail.

In classifying the garment in question, CBP stated that the sample garment lacked the character of an outerwear jacket. In CBP's view, the styling, cut, and features of the garment did not support a finding that this item was an outerwear jacket that was designed for wear over other clothing for protection against the weather. Since CBP's laboratory analysis revealed that the inner surface of Style J17-00014 was of weft knit sinker loop pile construction, CBP indicated that following Chapter 60, Note 1(c), HTSUS, classification was determined by the knit pile component of a laminated or bonded fabric, regardless of whether the knit pile component was used as the

inside or the outside surface of the fabric. Consequently, CBP classified the garment under subheading 6110.30.3053, HTSUS.

In your February 27, 2018 request for reconsideration of NY N288630, you opine that the garment should be classified in 6101.30.2010, HTSUS, based on the following factors: (1) the garment is marketed as a jacket, and the construction and composition of the garment is almost identical to NY M83936 and NY N008918; and (2) the garment meets six characteristics of a jacket, specified in the Informed Compliance Publication (“ICP”), entitled “Classification: Apparel Terminology under the HTSUS,” (in your view, these characteristics include the heavy weight shell fabric (10 oz or heavier), a full or partial lining, pockets at or below the waist, heavy-duty zipper or other heavy-duty closure, a tightening element as the cuffs, and a tightening element at the waist or bottom of the garment).

ISSUE:

Whether the garment is classified as knitted outerwear under subheading 6101.30, HTSUS, or as a knitted garment under subheading 6110.30, HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (“GRIs”) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provision of law for all purposes. GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order.

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the proper classification of merchandise. It is CBP’s practice to follow, whenever possible the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions at issue are as follows:

6101 Men’s or boys’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103.

* * *

6110 Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted.

The issue in this case is the proper classification of the garment as either a knitted outerwear jacket or similar article, or a sweater or similar article. You suggest that the garment is a knitted outerwear jacket and properly classified in heading 6101, HTSUS. The ENs to 61.01 provide that “this

heading covers a category of knitted or crocheted garments for men or boys, characterized by the fact that they are generally worn over all other clothing for protection against the weather.”

In NY N288630 at issue, CBP examined heading 6110, HTSUS. EN 61.10 provides that the heading “covers a category of knitted or crocheted articles, without distinction between male or female wear, designed to cover the upper parts of the body (jerseys, pullovers, cardigans, waistcoats and similar articles).”

In determining the identity of the garment, CBP references a number of sources of information. In this ruling, in addition to the ENs, we also consider CBP’s ICP, entitled “Classification: Apparel Terminology under the HTSUS (June 2008). This ICP, although provided to the trade community for general information purposes only, represents the considered thought and expertise of CBP concerning the classification of apparel in Chapter 61, HTSUS. The definition of “jackets” is under the category for “anoraks, windbreakers and similar articles (6101, 6102, 6113, 6201, 6202, 6210).” According to the ICP, anoraks, windbreakers, jackets and similar articles include the following:

Jackets, which are garments designed to be worn over another garment, for protection against the elements. Jackets cover the upper body from the neck area to the waist area, but are generally less than mid-thigh length. They normally have a full front opening, although some jackets may have only a partial front opening. Jackets usually have long sleeves. Knit jackets (due to the particular character of knit fabric) generally have tightening elements at the cuffs and at the waist or bottom of the garment, although children’s garments or garments made of heavier material might not need these tightening elements. This term excludes knit garments that fail to qualify as jackets because they do not provide sufficient protection against the elements. Such garments, if they have full-front openings, may be considered cardigans of heading 6110 (other).

* * *

Shirt-Jackets, which are hybrid garments that could be classified as either jackets or shirts. For garments that present characteristics of both jackets and shirts, the presence of three or more of the following ten criteria would generally indicate a jacket (if the result is not unreasonable):

- Heavy weight shell fabric (for example, 10 ounce or heavier denim).
- A full or partial lining.
- Pockets at or below the waist.
- Back vents or pleats (also side vents in combination with back seams).
- A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- Large jacket or coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- Lapels.
- Long sleeves without cuffs.
- A tightening element at the cuffs.
- A tightening element at the waist or bottom of the garment.

In NY L84458, dated August 1, 2005, CBP classified a men’s jacket constructed from a tri-laminate fabric consisting of an outer layer of 100 percent

polyester, brushed pile knit fabric bonded to an inner layer of 100 percent polyester, finely knit mesh fabric with a middle layer of a plastic film. The jacket featured a self-fabric stand up collar; a full front opening with a zippered closure; two large zippered pockets on the mid-chest extending below the waist; long sleeves with elasticized capping at the cuffs; a rubberized logo on the left arm; and a straight bottom finished with elasticized capping. CBP determined that the garment was classified under subheading 6101.30.2010, HTSUS.

Similarly, in NY N182124, dated September 1, 2011, CBP considered classification of a men's jacket constructed from a bonded fabric consisting of an outer layer of 41% wool, 38% polyester, 21% nylon knitted fabric that is bonded to a 100% polyester knit pile fabric. The jacket, in a regular size medium, had a self-fabric stand-up collar; a full front opening with a zipper closure; an embroidered logo on the left chest; long, tapered raglan sleeves; two zippered pockets below the waist; and a straight, close fitting bottom. CBP opined that the garment was designed for outdoor wear over other clothing to provide protection against the elements and classified the garment under subheading 6101.30.2010, HTSUS.

This instant garment is similar to the garments in NY L84458 and NY N182124, which were classified under 6101.30.2010, HTSUS. Considering the reasoning set forth in the above referenced rulings, the ENs, and the applicable ICP, in this case, Style J17-00014 features three jacket attributes: a heavy weight shell fabric (a 12-ounce shell fabric), pockets below the waist, and a heavy-duty zipper (with a storm flap that provides wind resistance). Moreover, the garment has a stand-up collar, bordered with elasticized edging, which provides additional warmth and protection from cold and wind. We note that although the garment at issue has no tightening at the hem and only marginal tightening at the wrist by way of a thin elastic binding, the sample provides a snug fit.¹ Additionally, in your request for reconsideration of NY N288630, you claim that the garment is marketed as a jacket and is comprised of water resistant fabric. CBP's laboratory confirmed the water resistant properties of the fabric. Thus, the garment provides some additional protection against the weather. Finally, we find that the level of protection from the weather offered by the garment is further reinforced by the middle layer of polyurethane film (though not visible in cross-section), which rises to the level of warmth and protection afforded by garments of heading 6101, HTSUS. See Headquarters Ruling Letter ("HQ") 965880, dated December 20, 2002. Accordingly, based on the factors above, the garment is more accurately described as an outerwear jacket under heading 6101, HTSUS.

HOLDING:

Based on the information submitted, we find that the garment at issue (Style J17-00014) in NY N288630 has features of an outerwear garment of heading 6101, HTSUS. In view of the foregoing, we find that the garment is properly classified under subheading 6101.30.2010, HTSUS, which provides for "men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including

¹ Initially, Design Resources, Inc. provided a size large garment, which fit loosely on the size medium mannequin, and with the lack of tightening elements, did not conform to the definition of a jacket. When Design Resources, Inc. submitted the sample for reconsideration, it provided a size medium, which offered a snug fit on the size medium mannequin.

ski-jackets), windbreakers and similar articles, knitted or crocheted, other than those of heading 6103: of man-made fibers: other: other: men's.”

EFFECT ON OTHER RULINGS:

NY N288630, dated November 30, 2017, is hereby **REVOKED** in accordance with the above analysis.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

ANDREW LANGREICH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF SOLAR PANELS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the country of origin of solar panels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is modifying one ruling letter concerning the country of origin of solar panels. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 52, No. 42, on October 17, 2018. One comment was received in response to that notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2019.

FOR FURTHER INFORMATION CONTACT: Yuliya A. Gulis, Food, Textiles and Marking Branch, Regulations and Rulings, Office of Trade, at (202) 325–0042.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Current customs law includes two key concepts: informed compliance and shared responsibility. Accordingly, the law imposes an obligation on CBP to provide the public with information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the public and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether any other applicable legal requirement is met.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Vol. 52, No. 42, on October 17, 2018, proposing to modify New York Ruling Letter (NY) N227976, dated August 22, 2012, pertaining to the country of origin of solar panels. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this notice.

In NY N227976, dated August 22, 2012, CBP determined China to be the country of origin of the finished solar panels. CBP has reviewed the ruling and has determined the ruling letter to be partially in error. It is now CBP's position that the solar panels are not substantially transformed in China, and the country of origin of the solar panels is Germany. CBP's analysis of appropriate marking in NY N227976 remains unchanged.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is modifying NY N227976 and revoking or modifying any other ruling not specifically identified to reflect the analysis contained in Headquarters Ruling Letter (HQ) H298653, set forth as an attachment to this notice. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: November 19, 2018

ANDREW LANGREICH
for

MYLES B. HARMON,
Director

Commercial and Trade Facilitation Division

Attachment

HQ H298653

November 19, 2018

OT:RR:CTF:FTM H298653 YAG

CATEGORY: Origin

MS. LAURA CALLESANO
CBC AMERICA CORP.
55 MALL DRIVE
COMMACK, NY 11725

RE: Modification of NY N227976; Country of Origin Marking; Solar panels

DEAR MS. CALLESANO:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has partially reconsidered New York Ruling Letter (“NY”) N227976, issued to CBC America Corp. on August 22, 2012. In NY N227976, CBP found that the processing performed in China substantially transformed all of the Chinese and non-Chinese components into solar panels. Therefore, CBP determined that China was the country of origin of the finished solar panels. We have reviewed NY N227976 and found the country of origin determination to be incorrect. For the reasons set forth below, we are modifying this ruling. CBP’s analysis of appropriate marking requirements pursuant to 19 C.F.R. § 134.46 and 19 C.F.R. § 134.47 in NY N227976 remains unchanged.

Pursuant to 19 U.S.C. § 1625(c)(1), a notice was published in the *Customs Bulletin*, Volume 52, No. 42 on October 17, 2018, proposing to modify NY N227976, and any treatment accorded to substantially similar transactions. One comment was received in response to this notice, supporting CBP’s modification and this ruling, as they adhere to CBP’s prior decisions on this issue.

FACTS:

In NY N227976, CBP described the solar panels as follows:

The items concerned are solar panels, which are assembled in China using both Chinese and non-Chinese components. There are 5 different sized solar panels concerned (GSP-6, GSP-12, GSP-30, GSP-40, GSP-55). The polycrystalline solar cells are manufactured in Germany. The front sheet is manufactured in Japan. The remainder of the parts, such as Ethylene Vinyl Acetate copolymer (“EVA”), anodized aluminum back board, edge protector, grommet, junction box, cable protection, output cable, inter connector, buss bar, insulation tape, blocking diodes, fuse and ring terminals, are all stated to be products of China. All the parts are sent to an assembler in China for assembly into a finished solar panel.

These particular solar panels are for off-grid usage only. They are described as semi-flexible solar panels. They use a semi-flexible aluminum backing and an unbreakable protective plastic film coating. They are used on boats and in RV’s. Typical applications for these solar panels include, trickle charging 12V batteries, maintenance charging for boats at moorings, maintenance charging for emergency vehicles and sole source charging for auxiliary recreational equipment (RV’s, jet skis, traffic signs, small appliances & other electronics). These solar panels are not made of glass and cannot be installed on a roof top to produce solar energy for homes.

Based on the information submitted in NY N227976, CBP found that the processing performed in China substantially transformed all of the components into a new and different article (solar panels). CBP considered the finished solar panels to be products of China and determined that they should be marked accordingly. We have now reconsidered our country of origin determination. However, we also find the analysis of the proposed marking in NY N227976 to be correct. Accordingly, we are only modifying the country of origin determination, as reflected in NY N227976.

ISSUE:

What is the country of origin of solar panels for country of origin marking purposes?

LAW AND ANALYSIS:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. § 1304) provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co. Inc.*, 27 CCPA 297, 302, C.A.D. 104 (1940).

Part 134, Customs Regulations (19 C.F.R. Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 C.F.R. § 134.1(b)), defines “country of origin” as the country of manufacture, production or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of the marking laws and regulations.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of the operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 6 C.I.T. 204, 573 F. Supp. 1149 (1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). If the manufacturing or combining process is a minor one that leaves the identity of the imported article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982).

In *Energizer Battery, Inc. v. United States*, 190 F. Supp. 3d 1308 (2016), the Court of International Trade (“CIT”) interpreted the meaning of “substantial transformation.” *Energizer* involved the determination of the country of origin of a flashlight, referred to as the Generation II flashlight. All of the components of the Generation II flashlight were of Chinese origin, except for a white LED and a hydrogen getter. The components were imported into the United States where they were assembled into the finished Generation II flashlight.

The court reviewed the “name, character and use” test utilized in determining whether a substantial transformation has occurred and noted, citing *Uniroyal, Inc. v. United States*, 3 C.I.T. at 226, 542 F. Supp. at 1031, *aff’d*, 702 F.2d 1022 (Fed. Cir. 1983), that when “the post-importation processing consists of assembly, courts have been reluctant to find a change in character, particularly when the imported articles do not undergo a physical change.” *Energizer* at 1318. In addition, the court noted that “when the end-use was pre-determined at the time of importation, courts have generally not found a change in use.” *Energizer* at 1319, citing as an example, *National Hand Tool Corp. v. United States*, 16 C.I.T. 308, 310, *aff’d*, 989 F.2d 1201 (Fed. Cir. 1993).

In reaching its decision in *Energizer*, the court expressed the question as one of whether the imported components retained their names after they were assembled into the finished Generation II flashlights. The court found “[t]he constitutive components of the Generation II flashlight do not lose their individual names as a result [of] the post-importation assembly.” The court also found that the components had a pre-determined end-use as parts and components of a Generation II flashlight at the time of importation and did not undergo a change in use due to the post-importation assembly process. Finally, the court did not find the assembly process to be sufficiently complex as to constitute a substantial transformation. Thus, the court found that Energizer’s imported components did not undergo a change in name, character, or use as a result of the post-importation assembly of the components into a finished Generation II flashlight. The court determined that China, the source of all but two components, was the correct country of origin of the finished Generation II flashlights under the government procurement provisions of the TAA.

In Headquarters’ Ruling Letter (“HQ”) *H095409*, dated Sept. 29, 2010, a U.S. manufacturer produced finished solar panels in California. Forty three percent of the cost content of the parts originated from the United States and all research and development took place in California. Key to CBP’s finding that a substantial transformation had taken place in the United States was the complex manufacturing process of the solar cells themselves. This process—which involved depositing thin films of chemicals on the inside of glass tubes—took five of the six and a half days it took to manufacture the finished solar panels. CBP found that turning bare glass tubes into functional solar cells in the United States constituted making a product with a new name, character, and use such that a substantial transformation had occurred.

However, in HQ H261693, dated September 16, 2015, CBP determined that the assembly processes fell short of those described in HQ H095409. In HQ H261693, solar panels were manufactured in Korea and Poland from solar cells (product of Malaysia or Korea), glass (China), frames (China/Belgium), junction box, cable, and connector (China/Czech Republic), back sheets (China/Germany), EVA (Korea/Japan), and interconnect ribbons. In addition to considering the country of origin of all of the components, CBP stated that the most important aspect of the case was the fact that the solar cells were produced in Malaysia or Korea and not in the countries where the solar panels were put together. Therefore, CBP found that assembling solar cells into finished solar panels did not result in a product with a new name, character, and use. CBP opined that solar cells imparted the essential character of the solar panels. Accordingly, where Malaysian solar cells were used,

the country of origin was Malaysia, and in the scenario where Korean solar cells were used, the country of origin was Korea.

We find that this case is similar to HQ H261693. In this case, solar panels are assembled in China using both Chinese and non-Chinese components. However, the polycrystalline solar cells, which constitute the very essence of the solar panels, are entirely manufactured in Germany. Solar cells do not lose their identity and become an integral part of the solar panels when they are combined with other components during the processing in China. The end-use of the solar cells and other components was pre-determined before the components were imported into China, and the solar cells (and other components) remained solar cells during processing in China. Therefore, in accordance with CBP's decision in HQ H261693 and the judicial precedent cited above, we find that the solar cells and other components are not substantially transformed by the processing in China, and thus the country of origin of the solar panels is Germany.

HOLDING:

Based on the facts provided, the solar cells from Germany are not substantially transformed into the solar panels by the processes that take place in China. As such, the country of origin of solar panels at issue is Germany.

EFFECT ON OTHER RULINGS:

NY N227976, dated August 22, 2012, is hereby **MODIFIED** in accordance with the above analysis.

In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

ANDREW LANGREICH

for

MYLES B. HARMON,

Director

Commercial and Trade Facilitation Division

**ACCREDITATION AND APPROVAL OF SPECTRUM
INTERNATIONAL LLC (ROSELLE, NJ) AS A COMMERCIAL
GAUGER AND LABORATORY**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Spectrum International LLC (Roselle, NJ), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Spectrum International LLC (Roselle, NJ), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 23, 2018.

DATES: Spectrum International LLC (Roselle, NJ) was approved and accredited as a commercial gauger and laboratory as of July 23, 2018. The next triennial inspection date will be scheduled for July 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Spectrum International LLC, 109 Aldene Road, Roselle, NJ 07203, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Spectrum International LLC (Roselle, NJ) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API Chapters | Title |
|--------------|----------------------------|
| 1 | Vocabulary. |
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 11 | Physical Properties Data. |
| 12 | Calculations. |
| 17 | Maritime Measurement. |

Spectrum International LLC (Roselle, NJ) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|------------|-------|--|
| 27-01..... | D 287 | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27-02..... | D1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-03..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27-04..... | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27-05..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27-06..... | D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27-07..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration. |
| 27-08..... | D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27-11..... | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27-13..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-48..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27-50..... | D93 | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester. |
| 27-53..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge. |
| 27-57..... | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27-58..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: December 20, 2018.

PATRICIA HAWES COLEMAN,
Acting Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 4, 2019 (84 FR 1483)]

ACCREDITATION AND APPROVAL OF CERTISPEC SERVICES USA, INC. (TEXAS CITY, TX) AS A COMMERCIAL GAUGER AND LABORATORY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Certispec Services USA, Inc. (Texas City, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Certispec Services USA, Inc. (Texas City, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 3, 2017.

DATES: Certispec Services USA, Inc. (Texas City, TX) was approved and accredited as a commercial gauger and laboratory as of April 3, 2017. The next triennial inspection date will be scheduled for April 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Certispec Services USA, Inc., 1448 Texas Ave, Texas City, TX 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Certispec Services USA, Inc. (Texas City, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API Chapters | Title |
|--------------|---------------|
| 3 | Tank Gauging. |
| 8 | Sampling. |

Certispec Services USA, Inc. (Texas City, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|------------|-------|---|
| 27-01..... | D287 | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27-03..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27-04..... | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27-05..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27-06..... | D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27-08..... | D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27-11..... | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27-13..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-48..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27-50..... | D93 | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester. |
| 27-57..... | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: December 20, 2018.

PATRICIA HAWES COLEMAN,
Acting Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 4, 2019 (84 FR 1484)]

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC. (TEXAS CITY, TX) AS A COMMERCIAL GAUGER AND LABORATORY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Intertek USA, Inc. (Texas City, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Texas City, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of February 28, 2018.

DATES: Intertek USA, Inc. (Texas City, TX) was approved and accredited as a commercial gauger and laboratory as of February 28, 2018. The next triennial inspection date will be scheduled for February 2021.

FOR FURTHER INFORMATION CONTACT: Melanie A. Glass, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 728 4th Avenue South, Texas City, TX 77590, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Intertek USA, Inc. (Texas City, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API Chapters | Title |
|--------------|----------------------------|
| 3 | Tank gauging. |
| 7 | Temperature determination. |
| 8 | Sampling. |
| 12 | Calculations. |
| 17 | Maritime measurement. |

Intertek USA, Inc. (Texas City, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and cer-

tain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|------------|-------|--|
| 27-01..... | D287 | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27-02..... | D1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27-03..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27-04..... | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27-05..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27-06..... | D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27-07..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration. |
| 27-08..... | D86 | Standard Test Method for Distillation of Petroleum Products. |
| 27-11..... | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids. |
| 27-13..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-46..... | D5002 | Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer. |
| 27-48..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27-50..... | D93 | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester. |
| 27-53..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge. |
| 27-54..... | D1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method. |
| | D70 | Density of Semi-solid Bituminous Materials (Pycnometer method). |
| | D97 | Standard Test Method for Pour Point of Petroleum Products. |

| CBPL No. | ASTM | Title |
|----------|-------|---|
| | D4007 | Standard Test Method for Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: January 11, 2019.

PATRICIA HAWES COLEMAN,
Acting Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 4, 2019 (84 FR 1484)]

**ACCREDITATION AND APPROVAL OF INSPECTORATE
AMERICA CORPORATION (CORPUS CHRISTI, TX) AS A
COMMERCIAL GAUGER AND LABORATORY**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Inspectorate America Corporation (Corpus Christi, TX), as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Inspectorate America Corporation (Corpus Christi, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of February 14, 2017.

DATES: Inspectorate America Corporation (Corpus Christi, TX) was approved and accredited as a commercial gauger and laboratory as of February 14, 2017. The next triennial inspection date will be scheduled for February 2020.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Inspectorate America Corporation, 4717 Santa Elena, Corpus Christi, TX 78405, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Inspectorate America Corporation (Corpus Christi, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API Chapters | Title |
|--------------|----------------------------|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 12 | Calculations. |
| 17 | Maritime Measurement. |

Inspectorate America Corporation (Corpus Christi, TX) is accredited for the following laboratory analysis procedures and methods for

petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|------------|-------|---|
| 27-03..... | D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27-04..... | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27-05..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27-06..... | D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27-08..... | D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27-11..... | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27-13..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-14..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27-46..... | D5002 | Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer. |
| 27-48..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27-58..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to CBPGaugersLabs@cbp.dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: December 20, 2018.

PATRICIA HAWES COLEMAN,
Acting Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, February 4, 2019 (84 FR 1481)]

ACCREDITATION OF DIXIE SERVICES INC. (GALENA PARK, TX) AS A COMMERCIAL LABORATORY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of Dixie Services Inc. (Galena Park, TX), as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Dixie Services Inc. (Galena Park, TX), has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 28, 2018.

DATES: Dixie Services Inc. (Galena Park, TX) was accredited as a commercial laboratory as of August 28, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that Dixie Services Inc., 1706 First Street, Galena Park, TX 77547 has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

Dixie Services Inc. (Galena Park, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|------------|-------|--|
| 27-04..... | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27-05..... | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27-06..... | D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27-07..... | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration. |
| 27-08..... | D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |

| CBPL No. | ASTM | Title |
|------------|-------|---|
| 27-11..... | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27-13..... | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27-14..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27-39..... | D721 | Standard Test Method for Oil Content of Petroleum Waxes. |
| 27-46..... | D5002 | Standard Test Method for Density and Relative Density of Crude Oils by Digital Density Analyzer. |
| 27-48..... | D4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27-50..... | D93 | Standard Test Methods for Flash-Point by Pensky-Martens Closed Cup Tester. |
| 27-53..... | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge. |
| 27-58..... | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products (Mini Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. <http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>.

Dated: December 20, 2018.

PATRICIA HAWES COLEMAN,
Acting Executive Director,
Laboratories and Scientific Services.

ACCREDITATION OF AMSPEC LLC (NEW HAVEN, CT), AS A COMMERCIAL LABORATORY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation of AmSpec LLC (New Haven, CT), as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that AmSpec LLC (New Haven, CT), has been accredited to test petroleum and certain petroleum products for customs purposes as of November 8, 2018.

DATES: AmSpec LLC (New Haven, CT) was accredited, as a commercial laboratory as of November 8, 2018. The next triennial inspection date will be scheduled for August 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Justin Shey, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202-344-1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that AmSpec LLC, 100 Wheeler St., Unit G, New Haven, CT 06512 has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

AmSpec LLC (New Haven, CT) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|------------|-------|---|
| 27-14..... | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27-57..... | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test

or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *<http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories>*.

Dated: December 20, 2018.

PATRICIA HAWES COLEMAN,
*Acting Executive Director,
Laboratories and Scientific
Services Directorate.*

[Published in the Federal Register, February 4, 2019 (84 FR 1481)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING CERTAIN ETHERNET SWITCHES,
ROUTERS AND NETWORK CARDS**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of certain Ethernet switches, routers and network cards. Based upon the facts presented, CBP has concluded in the final determination that the United States is the country of origin of the Ethernet switches, routers and network cards for purposes of U.S. Government procurement.

DATES: The final determination was issued on January 29, 2019. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR § 177.22(d), may seek judicial review of this final determination within March 7, 2019.

FOR FURTHER INFORMATION CONTACT: Tebsy Paul, Entry Process and Duty Refunds Branch, Regulations and Rulings, Office of Trade (202) 325–0195.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 29, 2019, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain Ethernet switches, routers and network cards, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H290670, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the programming and downloading operations performed in the United States, using U.S.-origin software, substantially transform non-TAA country Ethernet switches, routers and network cards. Therefore, the country of origin of the Ethernet switches, routers and network cards is the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any

party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: January 29, 2019.

Alice A. Kipel,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H290670

January 29, 2019

OT:RR:CTF:VS H290670 TP

CATEGORY: Origin

MR. STUART P. SEIDEL
BAKER & MCKENZIE, LLP
815 CONNECTICUT AVE.,
N.W. WASHINGTON, D.C. 20006-4078

RE: U.S. Government Procurement; Country of Origin; Ethernet Switches, Routers and Network Cards; Substantial Transformation

DEAR MR. SEIDEL:

This is in response to your letter dated September 20, 2017, requesting a final determination on behalf of ALE USA, Inc. (“ALE”) pursuant to subpart B of Part 177 of the U.S. Customs & Border Protection (“CBP”) Regulations (19 C.F.R. Part 177). This final determination concerns the country of origin of ALE’s Ethernet switches, routers and network cards. As a U.S. importer, ALE is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

Per your letter dated September 20, 2017, we have reviewed your request for confidentiality pursuant to 19 C.F.R. § 177.2(b)(7) with respect to certain information submitted. As that information constitutes privileged or confidential matters, it has been bracketed and will be deleted from any published versions.

FACTS:

ALE manufactures and imports a group of Ethernet switches, routers and network cards. The group of products consists of the following: OmniSwitch® OS6900-X72, OS6900-Q32, OS6900-C32, OS6900-CX72, OS6860/6860E family, OS 6560 family, OS 6450 family and OS 6865-U28X. You state that the hardware for these products was designed in Taiwan and manufactured in China. You state that the final programming of the EEPROM on the device and majority of the programming for the Alcatel Operating System (“AOS”) are completed and compiled in the United States and will be downloaded in the United States. You also account for the labor hours spent and the qualifications of the coders and developers who worked on developing, programming, and downloading the software in the United States.

You state that the assembly process is the same for all the products mentioned above. The metal fabrication consists of simple punching, bending and painting of sheet steel or aluminum metals to create the protective case. This occurs in Taiwan and takes approximately 20 minutes to complete. The remaining hardware assembly takes place in China. ALE states that the individual components of the hardware include resistors, capacitors, diodes, transistors, memory, application specific integrated circuits, memory modules, CPUs, printed circuit cards, and metal housings. ALE states that the countries of origin for these components are from various parts of Asia, including Singapore, Taiwan and China.

ALE describes the hardware assembly in China as follows:

1. The Surface Mount technology (“SMT”) installation involves the mounting of a preprogrammed [XXXXX] program. SMT involves the mounting of electronic components directly on to the printed circuit board. The [XXXXX] program is compiled codes that allows the CPU to have the necessary con-

figurations to support computer function by using a set of commands. The [XXXXXX] program is required to boot the device so that it can load the ALE programs. However, the devices cannot function until the U.S.-developed and programmed software and EEPROM are loaded in the United States.

2. An in circuit test (“ICT”) is performed. This process allows for the ICT to program a complex programmable logic device (“CPLD”) image into the CPLD programmable application-specific integrated circuit (“ASIC”). The CPLDs are integrated circuits that are configured to implement digital hardware and by programming them into an ASIC, the integrated circuits can be suited for a specific purpose, rather than general-purpose use. In this case, the CPLD image contains code that allows the CPU to boot the device for testing. Additionally, the EEPROM is programmed with critical information that is retrieved from ALE’s servers.

3. The hardware undergoes mechanical assembly.

4. Installation of a diagnostic file to allow for thorough testing. The purpose of the software that is downloaded on to the hardware in China is to perform diagnostic testing to assure the circuit paths on the printed circuit board are made and function properly.

5. The hardware undergoes functional testing.

6. An environment stress screening (“ESS”) test is performed. This is considered a type of burn-in test to identify manufacturing quality issues.

7. The hardware is packaged.

ALE contends that the programming undertaken in China is to verify that the product has been manufactured correctly. Specifically, the partial tests ensure that the surface mounting of electronic components is complete. You state that at this point, the hardware is missing the majority of programming leaving it incapable of performing the necessary functions of Institute of Electrical and Electronics Engineers (“I.E.E.E.”) Ethernet router functionality; therefore the product enters the United States in a non-functional state. Additionally, you state that in the United States, the systems are unpacked and presented to ALE test executives for proper configuration and labeling through a U.S. secure server. The assembly process in the United States involves the following steps: (1) the EEPROM is re-programmed with valid, proper information originating solely from ALE USA’s proprietary product Data Management tool; (2) the AOS is loaded onto an electronic storage medium; (3) final tests are conducted; (4) the product is packaged; (5) and quality control mechanisms are carried out which are validated to allow for release of the products to be shipped.

You state that the AOS software enables the OmniSwitch products to function as a switch/router. You assert that the AOS contains the specialized routing algorithms that transform merchant silicon into a functional OmniSwitch/Router and that, as stated above, the software was almost completely architected, developed, programmed and compiled in the United States. The EEPROM is also reprogrammed to incorporate product specific information allowing it to operate as a Layer 2, 3 and 6 device. You state that Layers 2, 3 and 6 refer to the layers that comprise an Open System Interconnection (“OSI”) networking model. You state that the layers are a controlled hierarchy where information is passed from one layer to the next creating a blueprint for how information is passed from physical electrical impulses to applications. The AOS is downloaded onto storage within the device. The software is compiled many times until a final version is approved.

Quality checks occur to certify that the code is ready and manufacturing test engineers work with engineering personnel to test the AOS software.

ISSUE:

What is the country of origin of the Ethernet switches, routers and network cards for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*).

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the Trade Agreements Act. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as “an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.” *See* 48 C.F.R. § 25.003.

In *Data General v. United States*, 4 C.I.T. 182 (1982), the court determined that the programming of a foreign Programmable Read-Only Memory chip (“PROM”) in the United States substantially transformed the PROM into a U.S. article. In the United States, the programming bestowed upon each integrated circuit its electronic function, that is, its “memory” which could be retrieved. A distinct physical change was effected in the PROM by the opening or closing of the fuses, depending on the method of programming. The essence of the article, its interconnections or stored memory, was established by programming. *See also, Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982) (stating the substantial transformation issue is a “mixed question of technology and customs law”); HQ 735027, dated September 7, 1993 (programming blank media (EEPROM) with instructions that allow it to perform certain functions that prevent piracy of software constitutes a substantial transformation); and, HQ 734518, dated June 28, 1993 (motherboards are not substantially transformed by the implanting of the central

processing unit on the board because, whereas in *Data General* use was being assigned to the PROM, the use of the motherboard had already been determined when the importer imported it).

CBP has examined the effect of downloading U.S.-developed software in previous decisions. For example, in HQ H258960, dated May 19, 2016, CBP considered the country of origin of network transceivers in two different scenarios. In Scenario One, the importer purchased “blank” transceivers from Asia. The transceivers were then loaded with U.S.-developed software in the United States, which made the transceivers functional. In Scenario Two, the importer purchased the transceivers with a generic program preinstalled, which was then removed so that the U.S.-developed software could be installed. CBP held that, in Scenario One, because the transceivers could not function as network devices without the U.S.-developed software, the transceivers were substantially transformed as a result of the downloading of the U.S.-developed software performed in the United States. However, in Scenario Two, because the transceivers were already functional when imported, the identity of the transceivers was not changed by the downloading performed in the United States, and no substantial transformation occurred.

Similarly, in HQ H175415 dated October 4, 2011, CBP held that imported Ethernet switches underwent a substantial transformation after U.S.-origin software was downloaded onto the devices’ flash memory in the United States, which allowed the devices to function. In China, the printed circuit board assemblies, chassis, top cover, power supply, and fan were assembled. Then, in the United States, U.S.-origin software, which gave the hardware the capability of functioning as local area network devices, was loaded onto the hardware. CBP noted that the U.S.-origin software “enables the imported switches to interact with other network switches” and that “[w]ithout this software, the imported devices could not function as Ethernet switches.” Under these circumstances, CBP held that the country of origin of the local area network devices was the United States. *See also* HQ H052325, dated March 31, 2009 (holding that imported network devices underwent a substantial transformation in the United States after U.S.-origin software was downloaded onto the devices in the United States, which gave the devices their functionality); and HQ H034843, dated May 5, 2009 (holding that Chinese USB flash drives underwent a substantial transformation in Israel when Israeli-origin software was loaded onto the devices, which made the devices functional).

In this case, the hardware is imported from China in a fully assembled state. However, at the time of importation the devices are not functional because they lack the software needed to run. Here, unlike Scenario Two in HQ H258960, the programming that occurs in China is to perform diagnostic testing to assure the circuit paths on the printed circuit board are made and function properly. Furthermore, contrary to Scenario Two in HQ H258960, the identity of the switches changes after the U.S.-origin software is downloaded onto the switches. Moreover, as in HQ H175415, HQ H052325, and HQ H258960, it is only after the installation of U.S.-origin software that the devices obtain their essence and functionality as switches and routers. Without the U.S. proprietary software, the devices cannot function as a network device in any capacity. Here, the AOS is developed and downloaded in the United States. The development, configuration, and downloading of the AOS helps transform the essence of the products at issue from merchant silicon into fully functional network devices that are capable of performing the

intended switching and routing functions. The devices at issue here derive their core functionality as switches and routers from the installation of the U.S.-developed software. The U.S.-developed software enables the system to interact with other network switches or routers through network switching and routing protocols, and allows for the management of functions such as network performance monitoring and security and access control.

Under these circumstances, and consistent with previous CBP rulings, we find that the country of origin of the final product is the United States, where the non-functional devices are substantially transformed as a result of downloading performed in the United States, with software developed in the United States. Furthermore, in the present case, the essence of the articles depends on the information technology found in the software, which allows the devices to communicate with other network switches or routers for their ultimate purpose. For country of origin determinations, it should be noted that the final determination differs based on each article's specific purpose, makeup, and applicable technology.

HOLDING:

The country of origin of the Ethernet switches, routers and network cards for purposes of U.S. Government procurement is the United States.

Notice of this final determination will be given in the Federal Register, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination.

Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days of publication of the Federal Register Notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

ALICE A. KIPPEL,

Executive Director,

Regulations and Rulings, Office of Trade.

[Published in the Federal Register, February 5, 2019 (84 FR 1775)]

**NOTICE OF ISSUANCE OF FINAL DETERMINATION
CONCERNING SELF-ADHESIVE CUTANEOUS
ELECTRODES**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (“CBP”) has issued a final determination concerning the country of origin of Rhythmlink International, LLC’s self-adhesive cutaneous electrode. Based upon the facts presented, CBP has concluded that the country of origin of the self-adhesive cutaneous electrode is the United States for purposes of U.S. Government procurement.

DATES: The final determination was issued on January 29, 2019. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than March 7, 2019.

FOR FURTHER INFORMATION CONTACT: James Kim, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade (202) 325-0158.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on January 29, 2019, pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of Rhythmlink International, LLC’s self-adhesive cutaneous electrode, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H300743, was issued under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). In the final determination, CBP concluded that the assembly and processing in China do not result in a substantial transformation. Therefore, the country of origin of Rhythmlink International, LLC’s self-adhesive cutaneous electrode is the United States for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such

determination in the **Federal Register**.

Dated: January 29, 2019.

Alice A. Kipel,
Executive Director,
Regulations and Rulings, Office of Trade.

HQ H300743

January 29, 2019
OT:RR:CTF:VS H300743 JK
CATEGORY: OriginDAVID S. ROBINSON
NEXSEN PRUET, PLLC
4141 PARKLAKE AVENUE
SUITE 200
RALEIGH, NC 27612

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Self-Adhesive Cutaneous Electrode; Substantial Transformation

DEAR MR. ROBINSON:

This is in response to your letter, dated September 10, 2018, requesting a final determination on behalf of RhythmLink International, LLC (RhythmLink) pursuant to subpart B of Part 177 of the U.S. Customs and Border Protection (CBP) Regulations (19 C.F.R. Part 177).

This final determination concerns the country of origin of various self-adhesive cutaneous electrodes. As a U.S. importer, RhythmLink is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination. In addition, you have requested a country of origin determination for marking purposes. Samples were submitted with your request.

FACTS:

RhythmLink is headquartered in Columbia, North Carolina and manufactures and distributes medical devices. It seeks a country of origin determination for purposes of government procurement for two types of self-adhesive cutaneous electrodes, marketed as “Disposable Stimulating Sticky Pad Surface Electrodes” and “Disposable Recording Sticky Pad Surface Electrodes.” You indicate that these products are designed and manufactured specifically for electrocardiogram (ECG) and electromyogram (EMG) monitoring applications. The catalog that you submitted indicates that the electrodes are pre-gelled and especially formulated to perform specific functions. You also state that these products are regulated by the U.S. Food & Drug Administration (FDA) under the category of “cutaneous electrode,” which is defined as “an electrode that is applied directly to a patient’s skin either to record physiological signals (e.g., the electroencephalogram) or to apply electrical stimulation.” See 21 C.F.R. § 882.1320.

Each self-adhesive cutaneous electrode consists of a “sticky pad,” composed of electrically conductive hydrogel laminated onto conductive plastic and fabric backing, which is attached to a leadwire with a miniscule amount of glue. RhythmLink sells its self-adhesive cutaneous electrodes in single (one pad) and paired (two pads connected) models with varying lengths and styles, and end users can customize the color of the connecting leadwire. You indicate that the functionality of the Sticky Pad Surface Electrode is common to all lengths and is unchanged by the color of the pre-connected leadwire. The Sticky Pad Surface Electrode also comes in varying pad sizes; the larger the pad size, the greater the conductivity (but lower the specificity) of the electrical signals. The leadwire acts as an electrical conductor that transfers low voltage electrical signals from the electrode to medical diagnostic equipment.

However, you also state that other varieties of cutaneous electrodes are available that are not pre-connected to a leadwire. Such cutaneous electrodes may connect to a leadwire by using alligator clips and other removable connectors.

You state that Rhythmlink conducts all of the engineering and design of its self-adhesive cutaneous electrode in the United States. Rhythmlink purchases the hydrogel used in its self-adhesive cutaneous electrodes from a manufacturer in bulk roll form. The hydrogel, including all of its components, is manufactured entirely in the United States and specifically developed as a sensing or stimulating gel for use in medical electrode-related applications in cutaneous electrodes. You state that the hydrogel is manufactured in such a way as to serve as a metal-electrolyte interface, through which current flow within a patient becomes electron flow in the electrode and leadwire. You also state that the quality of the signals generated depends, in part, on the electrical characteristics of the electrode assembly, which is largely determined by the formula of the hydrogel used.

The components used to formulate the hydrogel include deionized water, salts, and a gelling agent. These components are mixed together until homogenous, forming a conductive “soup.” The pH of the mixture is adjusted to a very specific level. The mixture is then cast to a specific thickness in sheet form directly onto a clear plastic backing material on a conveyor system, slowly moving along under specific environmental conditions (e.g., temperature and humidity) to allow the gel to set. At the end of the line, thin plastic film is pressed onto the gel as a protective layer prior to rolling the hydrogel product around heavy cardboard tubes in 300 feet lengths. You indicate that the hydrogel has a limited shelf life, after which it ceases to be a medical product. The bulk roll hydrogels are then shipped to China for further processing.

Korean-origin leadwire is also shipped to China. The leadwire is a commercially available 26-gauge twisted copper wire comprising 19 strands of 38-gauge copper wire with medical grade PVC covering. The leadwire is available in a total of 26 color options. The Korean supplier of this wire cuts the wire, crimps a socket pin, attaches a connector to one end of the wire, and ships the wire to China.

In China, the bulk roll hydrogel is first laminated to U.S.-origin conductive plastic and Chinese-origin fabric backing, in a process that occurs in one second for the surface area required to punch out a single self-adhesive cutaneous electrode. Then the laminated bulk roll hydrogel is mechanically die cut one pad at a time, taking less than a second per pad. Subsequently, the Korean-origin leadwire is attached to the pad using U.S.-origin glue, “sandwiching” it between the conductive plastic and fabric backing in a process that takes less than four seconds per electrode. Finally, the finished self-adhesive cutaneous electrodes are inserted into plastic pouches and cardboard packaging for shipment to the United States.

In the United States, the finished products are subject to sterilization and a randomized sampling and testing protocol prior to sale.

ISSUE:

What is the country of origin of the self-adhesive cutaneous electrode for purposes of U.S. Government procurement?

LAW AND ANALYSIS:

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain “Buy American” restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 C.F.R. § 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*) (TAA).

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with Federal Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government’s purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations define “U.S.-made end product” as:

. . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

The regulations define a “designated country end product” as:

WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

A “WTO GPA country end product” is defined as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country;
or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

48 C.F.R. § 25.003. We note that Korea is a WTO GPA country, but China is not.

A substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. A substantial transformation will not result from a minor manufacturing or combining process that leaves the identity of the article intact. See *United States v. Gibson-Thomsen Co.*, 27 C.C.P.A. 267 (1940); *National Juice Products Association v. United States*, 628 F. Supp. 978 (CIT 1986).

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. No one factor is decisive; the key issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States*, 573 F. Supp. 1149 (CIT 1983), *aff'd*, 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80-111, C.S.D. 85-25, C.S.D. 89-110, C.S.D. 89-118, C.S.D. 90-51, and C.S.D. 90-97. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred.

The Court of International Trade has also looked at the essential character of an article to determine whether its identity has been substantially transformed through assembly or processing. For example, in *Uniroyal, Inc. v. United States*, 3 CIT 220, 225, 542 F. Supp. 1026, 1030 (1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983), the court held that imported shoe uppers added to an outer sole in the United States were the "very essence of the finished shoe" and thus the character of the product remained unchanged and did not undergo substantial transformation in the United States. Similarly, in *National Juice Products Association v. United States*, 10 CIT 48, 61, 628 F. Supp. 978, 991 (1986), the court held that imported orange juice concentrate "imparts the essential character" to the completed orange juice and thus was not substantially transformed into a product of the United States.

For products used in medical-related applications, we have held that no substantial transformation occurs when the critical components which impart the essential character of the product subsequently undergo simple assembly and processing. In HQ H248851, dated July 8, 2014, CBP held that an Israeli-origin CO2 tube was not substantially transformed in China when cut to length and attached to four other components from Israel and China. CBP found that the CO2 tube performed the essential function of the finished product, which was the delivery of breath for monitoring the CO2 level in a patient's breath. By way of the assembly process in China, the CO2 tube was attached to other components that facilitated its function and did not lose its individual identity in the process.

Similarly, in HQ 560613, dated October 28, 1997, Customs, a predecessor of CBP, held that U.S.-origin components were not substantially transformed in Ireland when made into a pregnancy test kit. The test kit was made from the following U.S. components: top and bottom housing, paper, antibody, wick,

laminated, and nitrocellulose. In addition, a splash guard from Ireland and rayon from Germany were used. The critical components of the pregnancy test kit were found to be the three U.S.-origin antibodies. Customs recognized that the U.S.-origin components imparted the essential character of the pregnancy test kit and that the simple assembly of placing the antibodies onto the rayon membrane, and subsequent assembly of the strips into a plastic housing, did not result in a substantial transformation.

In H259473, dated June 30, 2015, CBP found that a single use negative pressure wound therapy system, comprised of a pump from China and two dressings from the United Kingdom, was of U.K.-origin due to the U.K.-origin of the dressings and the programming and final assembly of the pump occurring in the U.K. CBP found that the unique dressing was the “enabling technology” that provided the essential therapeutic elements for wound healing to the medical instrument. In addition, CBP noted that the medical instrument could only be used with the dressings included with the system.

Based on the information provided in your letter and consistent with CBP rulings cited above, we note that the majority of the components of the self-adhesive cutaneous electrode are of U.S. or WTO GPA country origin, including the U.S.-origin hydrogel, conductive plastic, and glue, and the Korean-origin leadwire. Only the fabric backing, which merely adds strength to the leadwire connection, is of Chinese-origin. More importantly, we find that the electrically conductive hydrogel, manufactured entirely in the United States, performs the essential function of the finished product, which is to provide the means whereby electrical activity in the body is recorded by the input circuits of an EEG/EMG machine, or electrical impulses are generated when used with stimulating equipment. The hydrogel’s adhesive properties are essential to allowing the product to function as a self-adhesive cutaneous electrode. As indicated in your letter, the hydrogel used in this product is dedicated for use in cutaneous electrodes, as the chemical and mechanical properties of the hydrogel dictate its single intended use in medical electrode-related applications. Furthermore, the product ceases to be a medical product once the shelf life of the hydrogel has been exceeded. Accordingly, we find that the U.S.-origin hydrogel imparts the essential character of the self-adhesive cutaneous electrode.

Regarding the assembly and processing that occurs in China, we note that these constitute relatively simple and minor operations involving highly repetitive, low-skill functions. The lamination of the hydrogel onto the conductive plastic and fabric backing, the mechanical die cutting of the pad, and the gluing of the leadwire occur in less than six seconds per electrode. In contrast, we recognize that all of the engineering and design of the self-adhesive cutaneous electrode occurs in the United States. While the conductive plastic, fabric backing and leadwire facilitate the product’s functionality, the hydrogel itself remains unchanged by the Chinese assembly and processing and continues to provide the essential function of the FDA-regulated “cutaneous electrode” product. Consequently, we find that the self-adhesive cutaneous electrode is not substantially transformed by the assembly and processing that occur in China.

With regard to your marking question, Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate

to an ultimate purchaser in the United States the English name of the country of origin of the article. The regulations implementing the country of origin marking requirements and exceptions of 19 U.S.C. § 1304, along with certain marking provisions of the Harmonized Tariff Schedule of the United States (19 U.S.C. § 1202), are set forth in 19 C.F.R. Part 134. “Country of origin” is defined, in relevant part, as: the country of manufacture, production, or growth of any article of foreign origin entering the United States. 19 C.F.R. § 134.1(b). Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of this part[.]”

For purposes of marking, the same substantial transformation analysis discussed above applies in this case. Accordingly, the self-adhesive cutaneous electrodes which are processed in China are products of the United States. Because the electrodes are products of the United States that are exported and returned without undergoing a substantial transformation, they are excepted from country of origin marking requirements pursuant to 19 C.F.R. § 134.32(m). Please note that if you wish to mark the self-adhesive cutaneous electrodes or the packaging containing these products to indicate that they are “Made in the USA”, the marking must comply with the requirements of the Federal Trade Commission (FTC). We suggest that you direct any questions on this issue to the FTC.

HOLDING:

Based on the information provided, the country of origin of the self-adhesive cutaneous electrode for U.S. government procurement purposes is the United States.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Dated: January 29, 2019.

Sincerely,

ALICE A. KIPPEL,

Executive Director,

Regulations and Rulings, Office of Trade.

[Published in the Federal Register, February 5, 2019 (84 FR 1772)]

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS
(NO. 12 2018)**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in December 2018. The last notice was published in the CUSTOMS BULLETIN Vol. 53, No. 1, January 2, 2019.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229-1177, or via email at iprrquestions@cbp.dhs.gov.

LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325-0095.

Dated:

CHARLES R. STEUART
Chief,
Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade

CBP IPR RECORDATION — DECEMBER 2018

| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|--|--|----------------|-----------------|---------------|
| 506258 | TMK 05-00763 | CATERPILLAR | CATERPILLAR INC | 12/03/2018 | 05/01/2029 | No |
| 4104368 | TMK 18-01318 | PASTA SANTA LUCIA S GRAG-NANO NAPOLI-ITALIA & Design | Pastificio Lucio Garofalo S.p.A. | 12/03/2018 | 05/29/2022 | No |
| 4618813 | TMK 18-01319 | BILLBOARD | BILLBOARD IP HOLDINGS, LLC | 12/03/2018 | 01/07/2025 | No |
| 5015471 | TMK 18-01320 | RODIN | Rodin LLC | 12/03/2018 | 11/09/2026 | No |
| 4659715 | TMK 18-01321 | LE LABO | LE LABO HOLDING LLC | 12/03/2018 | 03/23/2025 | No |
| 2191594 | TMK 99-00337 | CLINIQUE HAPPY | CLINIQUE LABORATORIES, LLC | 12/03/2018 | 12/22/2028 | No |
| VAU1-298-630 | COP 18-00204 | HARRY POTTER AND THE PRISONER OF AZKABAN (s17) | Warner Bros. Entertainment Inc. | 12/04/2018 | 12/04/2038 | No |
| 2215533 | TMK 00-00475 | JO MALONE | JO MALONE INC. | 12/04/2018 | 03/29/2029 | No |
| 1102705 | TMK 06-01022 | WHITE LINEN | ESTEE LAUDER INC. | 12/04/2018 | 12/19/2028 | No |
| 5459242 | TMK 18-01322 | FREDERIC MALLE | EDITIONS DE PARFUMS LLC | 12/04/2018 | 08/01/2028 | No |
| 2191516 | TMK 99-00333 | LAUDER PLEASURES FOR MEN (STYLIZED) | ESTEE LAUDER INC. | 12/04/2018 | 12/22/2028 | No |
| PA 940-867 | COP 18-00205 | POKEMON (DMG Version) | Nintendo of America Inc. | 12/06/2018 | 12/06/2038 | No |
| VAU001305408 | COP 18-00206 | Twisty Petz Packaging Artwork & Collectors' Guides. | Spin Master Ltd. | 12/06/2018 | 12/06/2038 | No |
| VA0002127295 | COP 18-00207 | Pomsies Packaging | Skyrocket LLC | 12/06/2018 | 12/06/2038 | No |
| VA0002127368 | COP 18-00208 | Pomsies Dog | Skyrocket LLC | 12/06/2018 | 12/06/2038 | No |
| 5565363 | TMK 18-01323 | CHARTER | Charter Communications Holding Company LLC | 12/06/2018 | 12/18/2028 | No |
| 5565364 | TMK 18-01324 | Charter and Design | Charter Communications Holding Company | 12/06/2018 | 12/18/2028 | No |

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| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|--|-------------------------------------|----------------|-----------------|---------------|
| 5004891 | TMK 18-01325 | SCARLETT PARIS | Specialty Brands International, LLC | 12/06/2018 | 10/19/2026 | No |
| 5602058 | TMK 18-01326 | IMVEXXY | TherapeuticsMD, Inc. | 12/06/2018 | 02/06/2029 | No |
| 5600888 | TMK 18-01327 | TWIST IT UP and Design | Twist It Up Inc. | 12/06/2018 | 02/06/2029 | No |
| 5143243 | TMK 18-01328 | ALPHASONIK | SHTZEL INC. | 12/06/2018 | 05/14/2027 | No |
| 4966750 | TMK 18-01329 | GAROFALO (Stylized) | PASTIFICIO LUCIO GAROFALO SPA | 12/06/2018 | 08/31/2026 | No |
| 5533057 | TMK 18-01330 | DESIGN ONLY (Alphasonik Alpha Symbol) | Shtztl Inc. | 12/06/2018 | 11/07/2028 | No |
| VAU001335148 | COP 18-00209 | Angelina follows dream | NICOLE, INC. d.b.a. NICOLE LEE. | 12/07/2018 | 12/07/2038 | No |
| 1938073 | TMK 02-00190 | HERMES FAUBOURG SAINT-HONORE PARIS & Design | Hermes International | 12/07/2018 | 02/28/2026 | No |
| 2164001 | TMK 06-00248 | ASHTON CABINET and Design | HOLT'S COMPANY | 12/07/2018 | 12/09/2028 | No |
| 2164082 | TMK 06-00249 | ASHTON IMPORTED MADE BY HAND and Design | HOLT'S COMPANY | 12/07/2018 | 12/09/2028 | No |
| 2209027 | TMK 07-00799 | QUILTED NORTHERN | GPFP IP HOLDINGS LLC | 12/07/2018 | 03/08/2029 | No |
| 3340709 | TMK 07-01221 | BRISAS | BDSRGO, Inc. | 12/07/2018 | 02/20/2028 | No |
| 3350982 | TMK 08-00760 | DRAPER | Draper, Inc. | 12/07/2018 | 03/11/2028 | No |
| 3430612 | TMK 10-00502 | HUCK | HUCK DOLL LLC | 12/07/2018 | 08/20/2028 | No |
| 3383434 | TMK 11-00866 | DESIGN ONLY (SILHOUETTE OF A STYLIZED MOOSE) | Abercrombie & Fitch Trading Co. | 12/07/2018 | 05/12/2028 | No |
| 3412585 | TMK 14-00627 | K KRAUTZBERGER & Design | Krautzberger GmbH | 12/07/2018 | 07/15/2028 | No |
| 0843369 | TMK 17-00901 | NESCAFE (Stylized) | SOCIETE DES PRODUITS NESTLE S.A. | 12/07/2018 | 04/30/2028 | No |

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|------------------|-----------------|------------------------------------|--------------------------------|----------------|-----------------|---------------|
| 5567901 | TMK 18-01331 | BRAWL STARS | Supercell Oy | 12/07/2018 | 12/29/2028 | No |
| 4955553 | TMK 18-01332 | EPHESUS | Ephesus Lighting, Inc. | 12/07/2018 | 08/10/2026 | No |
| 5055265 | TMK 18-01333 | COOPER POWER | Cooper Technologies Company | 12/07/2018 | 01/04/2027 | No |
| 4482038 | TMK 18-01334 | myzenhome.com (Stylized and Color) | MY ZEN HOME, LLC | 12/07/2018 | 05/11/2024 | No |
| 4744203 | TMK 18-01335 | DHYANA | My Zen Home, LLC | 12/07/2018 | 08/26/2025 | No |
| 5521038 | TMK 18-01336 | LOVE IT! | Cherryvale Farms, Inc. | 12/07/2018 | 10/17/2028 | No |
| 5307824 | TMK 18-01337 | EZBRAID | I & I Hair | 12/07/2018 | 01/10/2028 | No |
| 1458997 | TMK 96-00346 | RICCI ITALIAN SILVERSMITHS | GODINGER SILVER ART CO., LTD. | 12/07/2018 | 12/29/2027 | No |
| VA0002127288 | COP 18-00210 | Pomies Cat | Skyrocket LLC | 12/10/2018 | 12/10/2038 | No |
| VA0002127287 | COP 18-00211 | Pomies Dragon | Skyrocket LLC | 12/10/2018 | 12/10/2038 | No |
| VA0002127381 | COP 18-00212 | Pomies Koala | Skyrocket LLC | 12/10/2018 | 12/10/2038 | No |
| VA0002127371 | COP 18-00213 | Pomies Unicorn | Skyrocket LLC | 12/10/2018 | 12/10/2038 | No |
| 0441727 | TMK 09-00335 | WRANGLER (stylized) | WRANGLER APPAREL CORP. | 12/10/2018 | 03/28/2029 | No |
| 3503765 | TMK 14-00853 | Star Wars (Stylized) | Lucasfilm Ltd. LLC | 12/10/2018 | 12/23/2028 | No |
| 5573033 | TMK 18-01338 | CHERRYVALE FARMS | CHERRYVALE FARMS, INC. | 12/10/2018 | 01/02/2029 | No |
| 5229909 | TMK 18-01339 | LG (Stylized) | LG Corp. | 12/10/2018 | 09/27/2027 | No |
| 1232830 | TMK 03-00664 | ERMENEGILDO ZEGNA | ERMENEGILDO ZEGNA CORPO-RATION | 12/12/2018 | 06/29/2023 | No |
| 1273447 | TMK 18-01340 | ERMENEGILDO ZEGNA | Ermenegildo Zegna Corporation | 12/12/2018 | 07/10/2024 | No |
| 4994290 | TMK 18-01341 | Z ZEGNA | ERMENEGILDO ZEGNA CORPO-RATION | 12/12/2018 | 10/05/2026 | No |
| VA1-901-016 | COP 18-00214 | Foliage | Nancy Epstein | 12/13/2018 | 12/13/2038 | No |
| VA2-125-330 | COP 18-00215 | Fiammato | Artistic Tile, Inc. | 12/13/2018 | 12/13/2038 | No |

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| Registration No. | Recordation No. | Name of Cop/Tm/k/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|---|-------------------------------------|----------------|-----------------|---------------|
| VA2-020-175 | COP 18-00216 | Burano | Nancy Epstein | 12/13/2018 | 12/13/2038 | No |
| 1232762 | TMK 04-00026 | ERMENEGILDO ZEGNA | Ermenegildo Zegna Corporation | 12/13/2018 | 06/29/2023 | No |
| 1235315 | TMK 04-00028 | ERMENEGILDO ZEGNA | Ermenegildo Zegna Corporation | 12/13/2018 | 07/19/2023 | No |
| 1102282 | TMK 05-00910 | DESIGN ONLY (A FILLED TRANSPARENT BOX WITH OVERLAP LABEL) | FERRERO S.P.A. | 12/13/2018 | 12/12/2028 | No |
| 3434144 | TMK 08-00593 | Design Only (Lion) | Detroit Lions, Inc. | 12/13/2018 | 08/27/2028 | No |
| 1758804 | TMK 08-00808 | CIRRUS LOGIC AND DESIGN | Cirrus Logic, Inc. | 12/13/2018 | 06/16/2023 | No |
| 3507903 | TMK 10-00095 | MINI (Stylized) | Bayerische Motoren Werke AG | 12/13/2018 | 12/31/2028 | No |
| 3440600 | TMK 12-00969 | ATE | Continental Teves AG & Co oHG | 12/13/2018 | 09/03/2028 | No |
| 1465234 | TMK 13-00404 | MAUI JIM WITH A PARROT DESIGN | MAUI JIM, INC. | 12/13/2018 | 02/17/2028 | No |
| 3443858 | TMK 13-00435 | MAUI JIM (Stylized) | Maui Jim, Inc. | 12/13/2018 | 12/10/2028 | No |
| 2112161 | TMK 13-00486 | CIRRUS | CIRRUS LOGIC, INC. | 12/13/2018 | 02/11/2028 | No |
| 3457567 | TMK 13-00499 | CIRRUS LOGIC | Cirrus Logic, Inc. | 12/13/2018 | 10/01/2028 | No |
| 2048984 | TMK 18-01342 | ZEGNA | Consitex S.A. | 12/13/2018 | 07/01/2027 | No |
| 2911332 | TMK 18-01343 | ERMENEGILDO ZEGNA | CONSI/TEX, S.A. | 12/13/2018 | 03/14/2025 | No |
| 5620227 | TMK 18-01344 | BEARS | Chicago Bears Football Club, Inc | 12/13/2018 | 03/04/2029 | No |
| 4976025 | TMK 18-01345 | HEART OF DARKNESS | Gritty Realism Productions Limited | 12/13/2018 | 09/14/2026 | No |
| 3238177 | TMK 18-01346 | A and Design | Angels Baseball LP | 12/13/2018 | 08/01/2027 | No |
| 5570600 | TMK 18-01347 | J. FERRAR | J. C. Penney Purchasing Corporation | 12/13/2018 | 12/25/2028 | No |
| 5489259 | TMK 18-01348 | REDUSHAPER | SAF/TEX S.A.C. | 12/14/2018 | 09/12/2028 | No |
| 2718746 | TMK 03-00586 | IHAVEISSUES | L L WHITFIELD FAMILY TRUST | 12/17/2018 | 08/27/2023 | No |

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| Registration No. | Recordation No. | Name of Cop/Tm/Trm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|------------------------------------|----------------------------|----------------|-----------------|---------------|
| 1717573 | TMK 07-01016 | CIRRUS LOGIC AND DESIGN | CIRRUS LOGIC, INC. | 12/17/2018 | 12/22/2022 | No |
| 2151990 | TMK 08-00157 | CRYSTAL | CIRRUS LOGIC, INC. | 12/17/2018 | 07/21/2028 | No |
| 3439067 | TMK 08-00570 | PATRIOTS | New England Patriots LLC | 12/17/2018 | 12/03/2028 | No |
| 5617817 | TMK 18-01349 | S D and Design [logo] | Song Dog Spirits, LLC | 12/17/2018 | 02/27/2029 | No |
| 3316414 | TMK 18-01350 | DESIGN ONLY (GATOR GRIP) | Dunlop Manufacturing, Inc. | 12/17/2018 | 01/23/2028 | No |
| 3377754 | TMK 18-01351 | JIM DUNLOP ... U.S.A... (Stylized) | Dunlop Manufacturing, Inc. | 12/17/2018 | 05/05/2028 | No |
| 5430564 | TMK 18-01352 | SQUAT MAGIC | High Street TV (Group) Ltd | 12/17/2018 | 06/27/2028 | No |
| 5622521 | TMK 18-01353 | EMSON | E. Mishan & Sons, Inc. | 12/17/2018 | 03/04/2029 | No |
| 5615759 | TMK 18-01354 | BELL + HOWELL DISK LIGHTS | BHH LLC | 12/17/2018 | 02/27/2029 | No |
| 5615931 | TMK 18-01355 | DISK LIGHTS & Design | E. Mishan & Sons, Inc. | 12/17/2018 | 02/27/2029 | No |
| 5174759 | TMK 18-01356 | RIVER DRIVE | ALBRECHT HOLDINGS LLC | 12/17/2018 | 07/04/2027 | No |
| 5351139 | TMK 18-01357 | WHISKEY WOOD | ALBRECHT HOLDINGS LLC | 12/17/2018 | 03/05/2028 | No |
| 5602851 | TMK 18-01358 | F.I.T. | ALBRECHT HOLDINGS LLC | 12/17/2018 | 02/06/2029 | No |
| 5608300 | TMK 18-01359 | F.I.T. | ALBRECHT HOLDINGS LLC | 12/17/2018 | 02/13/2029 | No |
| 4390832 | TMK 18-01360 | JUMPER MAYBACH | Jumper Maybach, LLC | 12/17/2018 | 11/27/2023 | No |
| 3947565 | TMK 18-01361 | ACNEADVANCE | Futurebiotics, LLC | 12/17/2018 | 07/19/2021 | No |
| 3194180 | TMK 18-01362 | STUBBY | Dunlop Manufacturing, Inc. | 12/17/2018 | 04/02/2027 | No |
| 3296821 | TMK 18-01363 | TORTEX | Dunlop Manufacturing, Inc. | 12/17/2018 | 12/25/2027 | No |
| 5595762 | TMK 18-01364 | FORTNITE BATTLE ROYALE & Design | Epic Games, Inc. | 12/17/2018 | 01/30/2029 | No |
| 5375076 | TMK 18-01365 | FORTNITE | Epic Games, Inc. | 12/17/2018 | 04/09/2028 | No |
| 4481629 | TMK 18-01366 | FORTNITE | Epic Games, Inc. | 12/17/2018 | 05/11/2024 | No |
| 5595766 | TMK 18-01367 | FORTNITE & Design | Epic Games, Inc. | 12/17/2018 | 01/30/2029 | No |
| PA2-128-734 | COP 18-00217 | DONKEY KONG COUNTRY | Nintendo of America Inc. | 12/19/2018 | 12/20/2038 | No |

CBP IPR RECORDATION — DECEMBER 2018

| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|-----------------------------------|--|----------------|-----------------|---------------|
| 3443614 | TMK 08-00891 | IMPERIAL | STRIDE TOOL, LLC | 12/19/2018 | 12/10/2028 | No |
| 1031202 | TMK 10-00406 | REGO and Design | ENGINEERED CONTROLS INTERNATIONAL, LLC | 12/19/2018 | 04/27/2026 | No |
| 1757986 | TMK 10-00414 | REGO | ENGINEERED CONTROLS INTERNATIONAL, LLC | 12/19/2018 | 06/16/2023 | No |
| 4218360 | TMK 18-01368 | REDEFINING VALUE INVEST-ING | Investment Partners Group Inc. | 12/19/2018 | 01/02/2023 | No |
| 5603339 | TMK 18-01369 | SQUEEZAMALS | Beverly Hills Teddy Bear Company | 12/19/2018 | 02/06/2029 | No |
| 5235714 | TMK 18-01370 | CROWN FERTILITY | Fadi Ahiya | 12/19/2018 | 10/04/2027 | No |
| VA1969516 | COP 18-00218 | Vinturi Red Box. | FOCUS PRODUCTS GROUP INTERNATIONAL, LLC | 12/20/2018 | 12/20/2038 | No |
| VA1969480 | COP 18-00219 | Woman from Vinturi Red Box Front. | FOCUS PRODUCTS GROUP INTERNATIONAL, LLC, | 12/20/2018 | 12/20/2028 | No |
| VA1970050 | COP 18-00220 | Bottle from Vinturi Red Box. | FOCUS PRODUCTS GROUP INTERNATIONAL, LLC | 12/20/2018 | 12/20/2028 | No |
| VA1969490 | COP 18-00221 | Vinturi from Vinturi Red Box. | Focus Products Group International, LLC, | 12/20/2018 | 12/20/2028 | No |
| 2204150 | TMK 05-00707 | A. L. CHAMPIONS | OFFICE OF THE COMMISSIONER OF BASEBALL | 12/20/2018 | 02/17/2029 | No |
| 2196601 | TMK 10-00829 | PERFECTOUCH | GPCF IP HOLDINGS LLC | 12/20/2018 | 01/13/2029 | No |
| 3515455 | TMK 11-00686 | MINI | Bayerische Motoren Werke AG | 12/20/2018 | 01/14/2029 | No |
| 5577954 | TMK 18-01371 | MANIFEST | Mast-Jaegermeister SE | 12/20/2018 | 01/09/2029 | No |
| 5129219 | TMK 18-01372 | Design Only (STAG) | Mast-Jaegermeister SE | 12/20/2018 | 04/24/2027 | No |
| 3251675 | TMK 18-01373 | SALTSTICK | Toker, Jonathan, David | 12/20/2018 | 09/12/2027 | No |

CBP IPR RECORDATION — DECEMBER 2018

| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|--|--|----------------|-----------------|---------------|
| 1508502 | TMK 18-01374 | TRILogy | FLORA SPRINGS WINE COMPANY | 12/20/2018 | 01/11/2029 | No |
| 1529324 | TMK 89-00564 | BOSTON RED SOX and Design | BOSTON RED SOX BASEBALL CLUB | 12/20/2018 | 06/14/2029 | No |
| VA1-968-833 | COP 18-00222 | "MIT Metro Man" by Jumper Maybach. | Ben Earl Workman | 12/21/2018 | 12/21/2038 | No |
| VA1-968-835 | COP 18-00223 | "Blue Eyed Metro Man" by Jumper Maybach. | Ben Earl Workman | 12/21/2018 | 12/21/2038 | No |
| 1527788 | TMK 06-00271 | DODGERS (Stylized) | LOS ANGELES DODGERS LLC | 12/21/2018 | 06/07/2029 | No |
| 3538719 | TMK 10-00014 | A (STYLIZED) | ATLANTA NATIONAL LEAGUE BASEBALL CLUB, LLC | 12/21/2018 | 02/25/2029 | No |
| 5541140 | TMK 18-01375 | BUSHNELL GOLF | Bushnell Inc. | 12/21/2018 | 11/14/2028 | No |
| 5348525 | TMK 18-01376 | QUICKFIRE | CAZZMO INC. | 12/21/2018 | 03/05/2028 | No |
| 5333029 | TMK 18-01377 | QUICKFIRE Logo | CAZZMO INC. | 12/21/2018 | 02/14/2028 | No |

**COPYRIGHT, TRADEMARK, AND TRADE NAME
RECORDATIONS
(NO. 1 2019)**

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

SUMMARY: The following copyrights, trademarks, and trade names were recorded with U.S. Customs and Border Protection in January 2019. The last notice was published in the CUSTOMS BULLETIN Vol. 53, No. 1, January 2, 2019.

Corrections or updates may be sent to: Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street, NE., 10th Floor, Washington, D.C. 20229–1177, or via email at iprrquestions@cbp.dhs.gov.

FOR FURTHER INFORMATION CONTACT: LaVerne Watkins, Paralegal Specialist, Intellectual Property Rights Branch, Regulations and Rulings, Office of Trade at (202) 325–0095.

CHARLES R. STEUART

Chief,

*Intellectual Property Rights Branch
Regulations and Rulings, Office of Trade*

CBP IPR RECORDATION — JANUARY 2019

| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|------------------------------|------------------------------------|----------------|-----------------|---------------|
| 1511774 | TMK 11-00877 | DESIGN (STRIPE DESIGN) | GUCCI AMERICA, INC. | 01/31/2019 | 02/08/2029 | No |
| 1106722 | TMK 11-00923 | GG (Stylized) | GUCCI AMERICA, INC. | 01/31/2019 | 02/21/2029 | No |
| 3487108 | TMK 12-00623 | ARMOR ALL & Viking Design | The Armor ALL/SPP Products Company | 01/31/2019 | 02/19/2029 | No |
| 3552101 | TMK 12-00678 | HAYABUSA | HAYABUSA FIGHTWEAR INC. | 01/31/2019 | 03/25/2029 | No |
| 3495335 | TMK 13-00421 | CAROL ANDERSON BY INVITATION | CABI, LLC | 01/31/2019 | 12/02/2028 | No |
| 3527127 | TMK 13-00455 | HEART OF CABI FOUNDATION | Heart of Cabi Foundation, Inc. | 01/31/2019 | 02/04/2029 | No |
| 2097591 | TMK 13-00978 | SPECTEK | MICRON TECHNOLOGY, INC. | 01/31/2019 | 12/16/2028 | No |
| 3510957 | TMK 15-00148 | XW7Z-15A201-AB | Ford Motor Company | 01/31/2019 | 01/07/2029 | No |
| 3510962 | TMK 15-00149 | F2UZ-1526801-A | Ford Motor Company | 01/31/2019 | 01/07/2029 | No |
| 3510958 | TMK 15-00152 | FL-820S | Ford Motor Company | 01/31/2019 | 01/07/2029 | No |
| 3510959 | TMK 15-00168 | F8AZ-6B209-AA | Ford Motor Company | 01/31/2019 | 01/07/2029 | No |
| 3510966 | TMK 15-00170 | F7AZ-3049-AA | Ford Motor Company | 01/31/2019 | 01/07/2029 | No |
| 3511026 | TMK 15-00174 | 1W1Z-3355-AA | Ford Motor Company | 01/31/2019 | 01/07/2029 | No |
| 3519200 | TMK 15-00421 | DUAL POOL | Derrick Corporation | 01/31/2019 | 02/21/2029 | No |
| 3514363 | TMK 16-00216 | SAHARA NIGHTS & DESIGN | SOBEL WESTEX, INC. | 01/31/2019 | 01/07/2029 | No |
| 5558967 | TMK 19-00021 | KONTROLFREEK | KontrolFreek, LLC | 01/31/2019 | 03/19/2028 | No |
| 3863664 | TMK 19-00022 | FPS FREEK | KontrolFreek, LLC | 01/31/2019 | 01/19/2021 | No |
| 5313422 | TMK 19-00023 | ELEGANT INNOVATION | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 01/17/2028 | No |

CBP IPR RECORDATION — JANUARY 2019

| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|--------------------------------|----------------------------------|----------------|-----------------|---------------|
| 5509189 | TMK 19-00024 | FRESH 24/7 | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 10/03/2028 | No |
| 5214340 | TMK 19-00025 | FRESHCARE | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 08/30/2027 | No |
| 5216793 | TMK 19-00026 | G and Design | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 09/06/2027 | No |
| 4363605 | TMK 19-00027 | BUTTERFLY KISS | California Exotic Novelties, LLC | 01/31/2019 | 10/09/2023 | No |
| 5032684 | TMK 19-00028 | GOLD LTD BY GOLDTOE | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 11/30/2026 | No |
| 5245018 | TMK 19-00029 | HAMPTON | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 10/18/2027 | No |
| 5408507 | TMK 19-00030 | LITTLE BLACK SOCK | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 05/20/2028 | No |
| 5157235 | TMK 19-00031 | MOBILITYFX | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 06/07/2027 | No |
| 4983570 | TMK 19-00032 | DESIGN ONLY (Signature Design) | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 09/21/2026 | No |
| 5013239 | TMK 19-00033 | SIGNATURE GOLD BY GOLD-TOE | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 11/02/2026 | No |
| 5248715 | TMK 19-00034 | SILVERTOE | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 10/25/2027 | No |
| 5073691 | TMK 19-00035 | SOLEUTION | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 02/01/2027 | No |

CBP IPR RECORDATION — JANUARY 2019

| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|-----------------------------|---|----------------|-----------------|---------------|
| 5022730 | TMK 19-00036 | THE BEST SOCKS ON TWO FEET | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 11/16/2026 | No |
| 5092107 | TMK 19-00037 | SHEER BREEZE | GILDAN BRANDED APPAREL SRL | 01/31/2019 | 02/28/2027 | No |
| 3499849 | TMK 19-00038 | ALSTYLE | GILDAN ACTIVEWEAR SRL | 01/31/2019 | 12/09/2028 | No |
| 3499850 | TMK 19-00039 | ALSTYLE APPAREL & ACTIVWEAR | GILDAN ACTIVEWEAR SRL | 01/31/2019 | 12/09/2028 | No |
| 3048206 | TMK 19-00040 | AMERICAN APPAREL | GILDAN ACTIVEWEAR SRL | 01/31/2019 | 04/24/2026 | No |
| 5092879 | TMK 19-00041 | PLEXADERM | True Earth Health Products, LLC | 01/31/2019 | 02/28/2027 | No |
| 4872348 | TMK 19-00042 | PEPPA PIG | Entertainment One UK Limited | 01/31/2019 | 03/22/2026 | No |
| 4398385 | TMK 19-00043 | VERSACE | GIANNI VERSACE S.P.A. | 01/31/2019 | 12/10/2023 | No |
| 2421197 | TMK 19-00044 | RICE 'N EASY | Riceland Foods, Inc. | 01/31/2019 | 04/16/2021 | No |
| 1625600 | TMK 19-00045 | ESSIAC | ESSIAC Products Services, Inc. | 01/31/2019 | 03/04/2021 | No |
| 5607820 | TMK 19-00046 | COLLAMIN | The Hymed Group Corporation | 01/31/2019 | 02/13/2029 | No |
| 5578188 | TMK 19-00047 | PICCONERO | Tolaini Societa' Agricola S.R.L | 01/31/2019 | 01/09/2029 | No |
| 5622839 | TMK 19-00048 | POCKETBAC | Bath & Body Works Brand Management, Inc. | 01/31/2019 | 03/04/2029 | No |
| 5622913 | TMK 19-00049 | POCKETBAC HOLDER | Bath & Body Works Brand Management, Inc. | 01/31/2019 | 03/04/2029 | No |
| 5591972 | TMK 19-00050 | VICTORIA SPORT | Victoria's Secret Stores Brand Management, Inc. | 01/31/2019 | 01/23/2029 | No |

CBP IPR RECORDATION — JANUARY 2019

| Registration No. | Recordation No. | Name of Cop/Tmk/Tm | Owner Name | Effective Date | Expiration Date | GM Restricted |
|------------------|-----------------|---------------------------------------|---|----------------|-----------------|---------------|
| 5504547 | TMK 19-00051 | VICTORIA'S SECRET LOVE & HEART DESIGN | Victoria's Secret Stores Brand Management, Inc. | 01/31/2019 | 09/26/2028 | No |
| 5662835 | TMK 19-00052 | POP | PopSockets LLC | 01/31/2019 | 04/22/2029 | No |
| 5412231 | TMK 19-00053 | ILOCOS CHICHACORN and Design | ILOCOS BEST INTERNATIONAL | 01/31/2019 | 05/27/2028 | No |
| 5513218 | TMK 19-00054 | EVENUP | Oped GmbH | 01/31/2019 | 10/10/2028 | No |
| 5631839 | TMK 19-00055 | BELL+HOWELL and Design | BHH LLC | 01/31/2019 | 03/18/2029 | No |
| 5293302 | TMK 19-00056 | 1630 | Roller Bearing Company of America, Inc. | 01/31/2019 | 12/26/2027 | No |
| 5293301 | TMK 19-00057 | 1635 | Roller Bearing Company of America, Inc. | 01/31/2019 | 12/26/2027 | No |
| 5293304 | TMK 19-00058 | 1641 | Roller Bearing Company of America, Inc. | 01/31/2019 | 12/26/2027 | No |
| 5293303 | TMK 19-00059 | 1621 | Roller Bearing Company of America, Inc. | 01/31/2019 | 12/26/2027 | No |
| 5293300 | TMK 19-00060 | 1600 SERIES | ROLLER BEARING COMPANY OF AMERICA, INC. | 01/31/2019 | 12/26/2027 | No |

AGENCY INFORMATION COLLECTION ACTIVITIES:**Application for Extension of Bond for Temporary Importation**

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and must be submitted (no later than March 8, 2019) to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number (202) 325-0056 or via email *CBP_PRA@cbp.dhs.gov*. Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (83 FR 52498) on October 17, 2018, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should

address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application for Extension of Bond for Temporary Importation.

OMB Number: 1651-0015.

Form Number: CBP Form 3173.

Abstract: Imported merchandise which is to remain in the customs territory for a period of one year or less without the payment of duties is entered as a temporary importation, as authorized under the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202). When this time period is not sufficient, it may be extended by submitting an application on CBP Form 3173, "*Application for Extension of Bond for Temporary Importation.*" This form is provided for by 19 CFR 10.37 and is accessible at:
<https://www.cbp.gov/newsroom/publications/forms?title=3173>.

Current Actions: CBP proposes to extend the expiration date of this information collection with no changes to the burden hours or to Form 3173.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,200.

Estimated Number of Annual Responses per Respondent: 14.

Estimated Total Annual Responses: 16,800.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 3,646.

Dated: February 1, 2019.

SETH D. RENKEMA,
Branch Chief,
Economic Impact Analysis Branch,
U.S. Customs and Border Protection.

[Published in the Federal Register, February 6, 2019 (84 FR 2243)]